Public Utilities

FORTNIGHTLY

Volume LI No. 9 April 23, 1953

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Public Utilities
FORTNIGHTLY

VOLUME LI APRIL 23, 1953 NUMBER 9

ARTICLES

FEATURE SECTIONS

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

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14 YEARS

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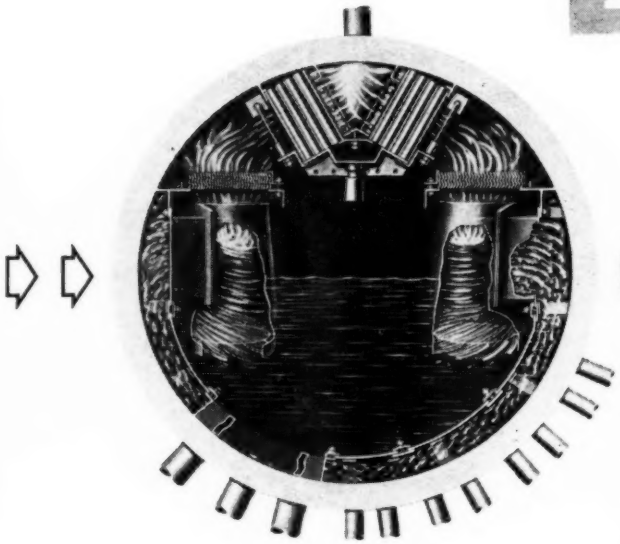

An important element in succe high-pressure operation is the B Cyclone Steam Separator, de oped by B&W Research. This sim highly efficient device is typical the manner in which B&W's prog sive research pushes the scienc steam generation to ever hi levels of economy.

For those seeking the high steam-cycle efficiencies obtainable with steam pressures over 2000 psi, B&W offers unparalleled design and operating experience . . . drawing upon a background extending over the last 14 years with units to serve over 10,000,000 kilowatts of generating capacity.

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B&W's many years of experience in designing and building boilers for economical, high-pressure steam generation, as exemplified in the list on the opposite page, are at your service.

G-585T

Pages with the Editors

ONE of the most famous river systems in the United States still remains undeveloped from the standpoint of hydroelectric potential. Paradoxically, this is one of the rivers which received the earliest attention of engineers and electric industry experts and is one of the rivers which seemed almost designed by Providence for such useful exploitation in the service of mankind. The reference is to that paragon of scenic beauty so dear to the hearts of honeymooners—the Niagara river.

IN few other places in the world has nature provided its own dam for purposes of hydroelectric development. Yet the Niagara Falls diversion and development so far permitted and constructed, amount to only a fraction of the potential. If harnessed, the cataracts of this system (on the St. Lawrence and Niagara rivers combined) would yield 8 per cent more power annually for United States consumers than the generators of the fabulous Grand Coulee dam on the Columbia river. A steady flow rate, a phenomenon for which these rivers are noted, makes them ideal for the purpose. Its practical problems of construction have been under study since 1900. The real obstacles are political and economic.

HERBERT BRATTER

WILLIAM E. MILLER

BECAUSE of proximity and because they are of the same drainage system, the Niagara project is popularly confused with the St. Lawrence seaway and power project, which has had more than its own share of political and economic controversy. If anything, the Niagara situation has been overshadowed by the perennial arguments and interminable disputes over its multipurpose cousin—the St. Lawrence seaway and power project.

BUT now there is hope for an end to political disagreements over Niagara; progress could still be delayed indefinitely by the very rivalry of alternative remedies proposed. Unlike the St. Lawrence project, the Niagara development has suffered, not so much from opposition in toto as from these conflicting remedies. So far it has been a case of too many cooks and no soup at all.

OVER the past three years three distinct proposals have emerged for St. Lawrence power development. These might be roughly classified as Federal,

What goes on at this Round Table?

• They could be exchanging ideas on new financing . . . discussing the cost of new money . . . hearing an expert appraisal of long-term trends for utilities.

Those present, in addition to the public utility executives, include experts from investment banking institutions, insurance companies, rating agencies—and from numerous other types of financial organizations.

Yes, this is a typical Public Utility "Round Table" at the Irving. Last year alone, 145 representatives from 83 utility companies attended these sessions.

These "Round Tables," now going into their sixth year, are one of the ways we seek to serve the public utility industry. As specialists in this field, we are constantly on the lookout for ways to be of practical help. If your company has an unusual problem, that's the kind of challenge we welcome.

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Public Utilities Department—TOM P. WALKER, *Vice President in Charge*

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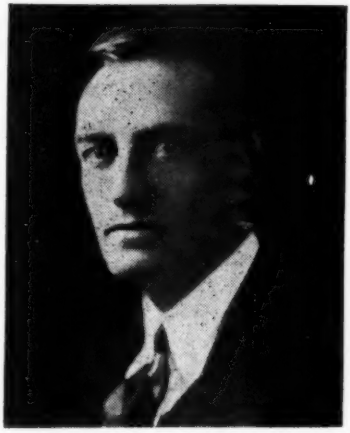
state, and privately owned utility company development plans. With the departure of the Truman administration—supporting grandiose ambitions of the Interior Department to create a Federal power empire in the Northeast—the Federal plan, which would make the Interior Department the constructing and power-marketing boss of the project, has apparently gone into eclipse.

THE New York state proposal would lean heavily on the New York State Power Authority, already busily engaged in seeking authority from the Federal Power Commission to develop St. Lawrence power. The leading article in this issue explores the private company program, although it discusses as well the alternative proposals.

THE author of this article in favor of development by business-managed, tax-paying electric utility companies is REPRESENTATIVE WILLIAM E. MILLER, Republican, of the forty-second district of New York, which includes parts of Erie county (Buffalo) and Niagara county. Born in Lockport, New York, REPRESENTATIVE MILLER graduated from Notre Dame University (BA, '35) and Albany Law School of Union University (LLB, '38). Following a brief general practice in Lockport, he was inducted into the Army as a Private during World War II and emerged as a First Lieutenant assigned to the Judge Advocate's office. He assisted in the war crime trials at Nuremberg. He has since served as district attorney of Niagara county and was first elected to the 82nd Congress in 1950.

* * * *

ONE of the real veterans of public utility law practice appears as the author of the article "Are Fictions of Law and Accounting Confiscatory?" beginning on page 539. He is WILLIAM M. WHERRY of the New York bar, whose firm Wherry, Weadock & Hunt is so well known in this field of specialized practice. The son of an Army General, MR. WHERRY was educated at the University of Michigan (BS, '98) and studied law at Cincinnati Law School and Columbia University. He has since



WILLIAM M. WHERRY

been continuously engaged in specialized utility practice. His writings include the well-known book *Public Utilities and the Law* (1925) and many magazine articles. He has also lectured extensively on public utilities and their problems.

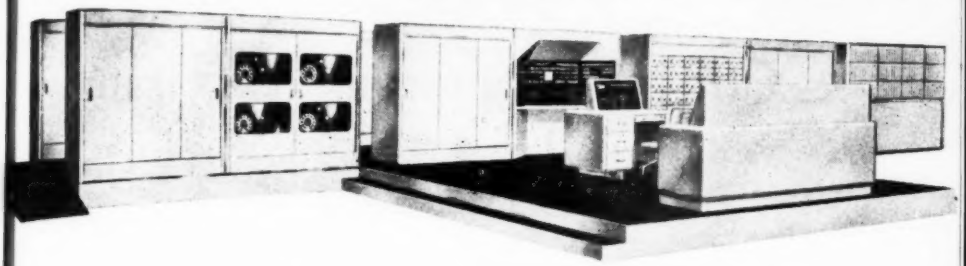
* * * *

HERBERT BRATTER, well-known author of business articles, residing in Washington, D. C., collected some of his information for this article about the Barcelona traction controversy firsthand. He included this research as part of a trip made last summer to Spain and other European countries. MR. BRATTER is an old hand at world travel. He served as statistician for the Chinese government in Shanghai from 1921 to 1923, and as manager of the Buenos Aires branch of the Export Advertising Agency from 1925 to 1927. From 1929 to 1935 he was chief business specialist for the United States Commerce and Treasury departments, assigned to the embassy at Tokyo. MR. BRATTER's interesting analysis of the Barcelona Case appears in this issue under the title "Barcelona—A Spanish Lesson for Investors."

THE next number of this magazine will be out May 7th.

The Editors

OTHER REMINGTON RAND ELECTRONIC DEVELOPMENT



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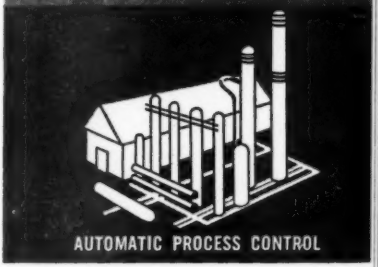

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INTEGRATION OF COMBINED UTILITY OPERATIONS

Considering how many important cities are served with both gas and electricity by the same utility company, the problems peculiar to combination utility operations have received comparatively little attention. Such cities include, among others: Baltimore, Binghamton, Cincinnati, Davenport, Evansville, Louisville, New Orleans, New York, Newark, Oklahoma City, Rochester, San Diego, San Francisco, Shreveport, Tucson, and Wichita. Here is an article devoted to the regulatory phase of combined utility operations and deals with the largest combination utility (as well as the largest metropolitan utility operation in the world), Consolidated Edison Company of New York. G. R. Hadden tells how this giant system manages to keep gas, electric, and steam functions separated for purposes of the record, without sacrificing certain economies and efficiency peculiar to an integrated combined utility.

WHAT THE INVESTOR LOOKS FOR IN UTILITY SECURITIES

This article does not attempt to give advice directly to those who would invest in the utility industry. Instead, it seeks to suggest to utility financial people what would or should make such securities attractive to the investing public. This is quite important, at this time when so many utility organizations need an increasing amount of financing to take care of necessary plant expansion. Clyde Olin Fisher, economics professor of Wesleyan University, Middletown, Connecticut, has some thought-provoking slants on what kind of a package the utility investor is looking for, these days, for his money.

PROBLEMS OF TRANSIT FINANCE

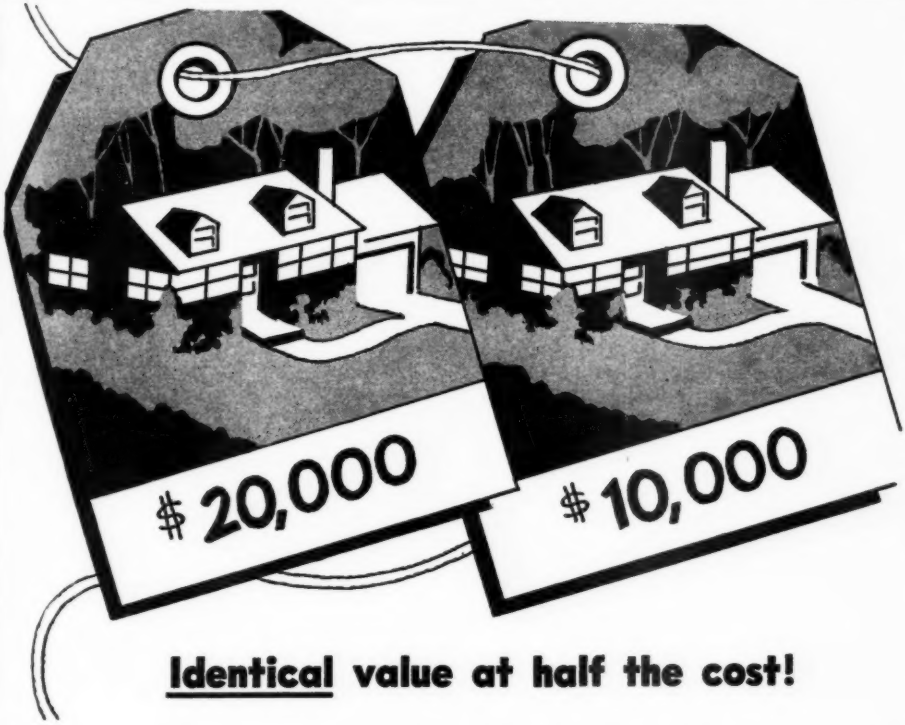
Here is a succinct and readable explanation of the economic predicament of most transit utilities. The public, apparently, does not realize all the free service supplied to other users of public streets and the use of such streets by delivery trucks without the burdens imposed on transit companies. Whether transit fares have already reached the limit and whether the automobile is a practical substitute may be debatable. But Charles Alan Wright, assistant professor, University of Minnesota Law School, makes us think about the need of a definite regulatory policy on transit's future.

WHAT ARE NATURAL RESOURCES?

Very often it takes the lighter touch of satire to make sufficiently evident the full impact of a wrong idea. Until the Eisenhower administration took office, the Federal government, particularly the Interior Department, seemed to look on natural resources as an exclusive preserve for government development and considerable business activity. But the definition of a natural resource can be extended almost to ludicrous limits. Ships at sea, lumber companies, farmers, aviators, and so on, all utilize some form or another of natural resource. George W. Keith, free-lance writer of Cincinnati, has undertaken to follow this tenuous concept to extreme conclusions.

★

Also . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.***



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IT isn't often that you can get an identical value at half the cost.

But here *is* such an instance:

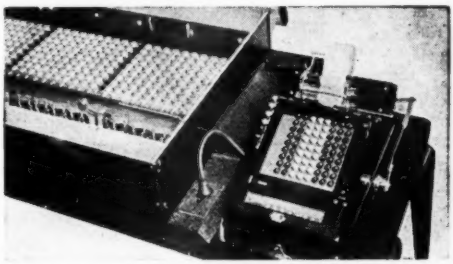
When a bill analysis is made in your offices, it's really a big project that may take weeks and weeks to complete. You may have to acquire and train a special clerical force. The overhead costs, too, are correspondingly big.

On the other hand, your costs drop to about half when you turn over the task to us and the work is done on high-speed Bill Frequency Analyzer machines which are designed especially for the purpose.

Your bill analysis can be turned out much faster than you may think. Send for the interesting, helpful booklet which tells more about this efficient method of compiling bill analyses.

P.S. If you use punched cards for billing, we are also equipped to make your analyses from them.

Saves 50% in time and money!



This Bill Frequency Analyzer—developed especially for utility usage data—automatically classifies and adds in 300 registers—in one step.

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Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

PAUL W. SHAFER
U. S. Representative from Michigan.

"We need fewer bureaucrats and more parking places."

JESSE P. WOLCOTT
U. S. Representative from Michigan.

"The government is not going to be in competition with business, industry, or agriculture."

RAYMOND R. PATY
Director, Tennessee Valley Authority.

"We should not be complacent, even though we have folks, resources, and a way of life that attracts industry."

CHARLES SAWYER
Former Secretary of Commerce.

"Some people are so engrossed with trying to save the rest of the free world that they take only a casual look at the problems here at home."

CLARENCE MANION
Dean emeritus, Notre Dame Law School.

"To save America we must do more than build military resistance against despotism in Moscow; we must be even more vigilant to prevent the establishment of despotism in Washington."

EDITORIAL STATEMENT
Oskaloosa (Iowa) Herald.

"No one knows better than retailers the bitter consequences of wasteful government measured in terms of inflation and depreciated money. They must explain it to consumers across every store counter in the nation, because 'cheap' money means 'high prices.'"

CRAWFORD H. GREENEWALT
***President, E. I. du Pont** de Nemours & Company.*

"A hundred years ago the relationships between human incentive and human accomplishment were obvious. Today the chain has many links, and their connection is sometimes obscure. Nevertheless, the same causes still produce the same effects no matter how complex the intervening steps may become."

MARY G. ROEBLING
President and chairman, Trenton Trust Company.

"Real, sound, and workable government starts at home. The tendency of states to constantly look toward the Federal government for all kinds of aid—and in countless instances demand it—has done something to those states. It has weakened the once strong roots of state government; made them dependents and retarded their initiative."

MILBURN PETTY
Writing in The Oil Daily.

"The idea of locking up Naval oil reserves for use in an emergency—and then not using them even when the emergency arrives—may be on the way out."

EDITORIAL STATEMENT
Cleveland Plain Dealer.

"The government should not place the railroads at a competitive disadvantage by maintaining over them a more cumbersome, more inflexible form of regulation than applies to the competing forms of transportation. . . . Congress has an enormous task to perform—the task of formulating an equitable up-to-date government transportation policy."

FRED G. SINGER
Development department, E. I. du Pont de Nemours & Company.

"There is no such thing as a group known as 'the consumers,' separate from and the target of other classes of people. Every individual is born a consumer and remains so until his death. Where we start to become different from one another, from an economic point of view, is in the various means each one of us finds to earn the medium of exchange which makes it possible for him to continue as a consumer."

SINCLAIR WEEKS
Secretary of Commerce.

"The November election gave a clear mandate to slam on the brakes and move forward in a different direction. The Eisenhower administration will not duck the responsibility of carrying out this mandate. Shrill cries will be heard as the axe is swung on deadwood and poison oak. Some functions will be canceled. Some folk will feel hurt. But millions of taxpayers already *are* hurt by the rising cost of government."

Excerpt from the Cleveland Trust Company Business Bulletin.

"If an individual keeps his expenses below his income, the margin is called 'saving' and he is praised for being thrifty and a worthy citizen. If a corporation does the same thing, the margin is called 'profit' and that becomes a term of suspicion in the minds of many persons. It is a strange twist of logic to bestow praise in the first case and criticism in the second. Surely corporations, like individuals, cannot expect to remain solvent, if they consistently fail to match outgo with income."

DOUGLAS MACARTHUR
Chairman of the board, Remington Rand, Inc.

"Today we stand on the threshold of a new life. What vast panoramas will open before us none can say. They are there, just beyond the horizon, just over there, and they are of a magnificence and a diversity far beyond the comprehension of anyone . . . today. Our progress up to now has been in direct ratio to the degree of human freedom afforded us. Our rate of progress in the future will be determined in identical fashion. With freedom assured, there can be no limit to the progress we can make. The new world that lies before us has no boundaries. It has no lost horizons. Its limits are as broad as the spirit and the imagination of man."

Weaklings!

Limited Accessibility of The California Oregon Power Company's Toketee Falls Hydro Station Puts Premium on Generator Dependability

AT BEST, there's no streamlined, sea-level route to the Toketee Falls Power Plant on the Umpqua River. That's apparent from the view at the left. And a man-sized layer of snow is normal there for the winter months. Obviously the station's three 16,667-kva generators had to be built with self-sufficiency to match this rugged country.

This assured dependability is the result of Allis-Chalmers half century of experience building hydraulic generators.

It is also the result of continuous engineering progress. For example, A-C has pioneered development of combined motor-generator and pump-turbine units for storage plant operation. One such unit now under construction will have a motor-generator rated 102,000 hp, making it the largest motor in the world.

Further assurance that each generator is built to give the most economical and satisfactory performance for the given installation stems from A-C's engineering background as the only builder of both generators and all types of hydraulic turbines.

When you need power production or distribution equipment, you gain by calling your A-C representative early in the planning stages. Allis-Chalmers, Milwaukee 1, Wis.

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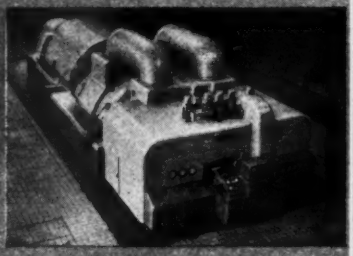
IT PAYS TO KEEP PACE WITH MACHINERY PROGRESS

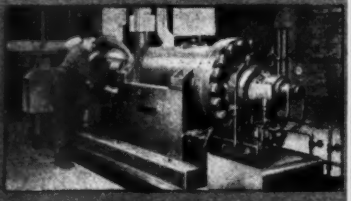


Installation-Proved Supercharged Cooling

Installed in 1951, this turbine generator unit has proved worth of *supercharged* conductor cooling. Resulting increased output per unit size cuts many plant costs.

10,000,000 Kva I.C. 3-Cycle Breakers

For maximum system stability, A-C offers up to 20-20-20 cycle repetitive reclosing. Full mechanically trip-free mechanism assures great reliability of operation.



Modern Barrel-Type Boiler-Feed Pumps

Features include external glands, horizontally split inner case, metal-to-metal faces, only one internal gasket. Ratings range from 1200 to 5000 psig, 300 to 2500 gpm.

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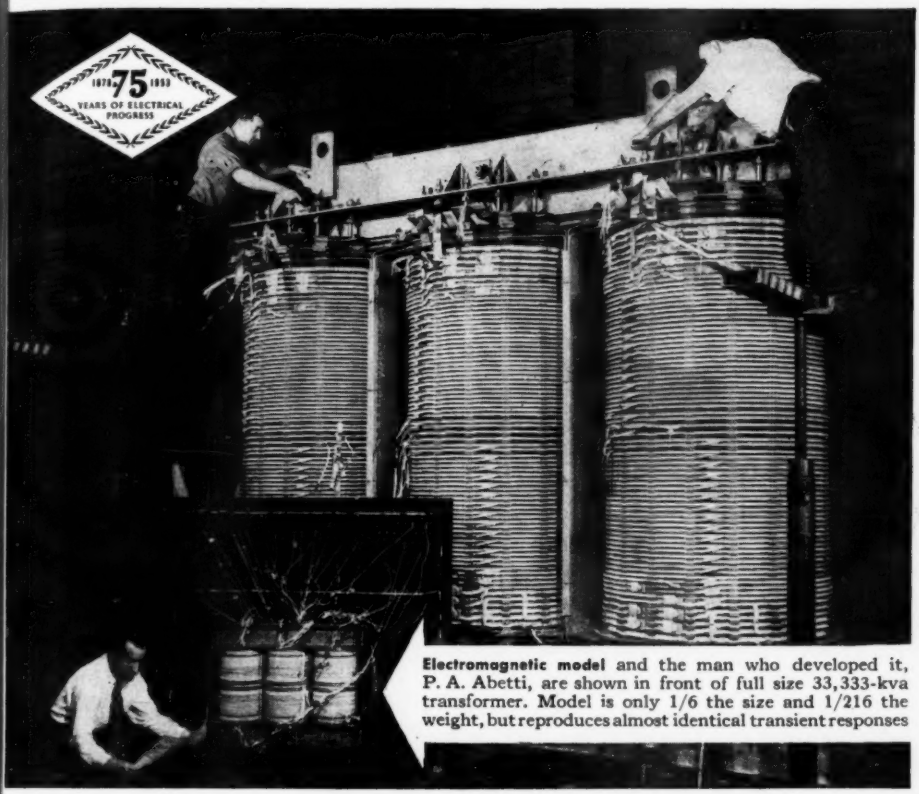

Electromagnetic model and the man who developed it, P. A. Abetti, are shown in front of full size 33,333-kva transformer. Model is only 1/6 the size and 1/216 the weight, but reproduces almost identical transient responses

Major G-E development promises new high in reliability of power transformers

Electromagnetic models predict transient voltages in power transformers . . . before they are built.

With the *electromagnetic model,* General Electric engineers can accurately determine transient voltage magnitudes and wave shapes at any points in a transformer winding and for all types of impulse waves.

Accurate knowledge of these voltages—in the design stage—is a vital factor in determining the most effective use of transformer insulation. Electromagnetic models are also being used for improvement of present designs and for development of new winding structures leading to reduced size and weight, increased reliability.

A new tool has been created for accelerating transformer progress. Its successful application is already being reflected in improved G-E power transformers. For more information, write to Section 421-2E, General Electric Co., Schenectady 5, New York.

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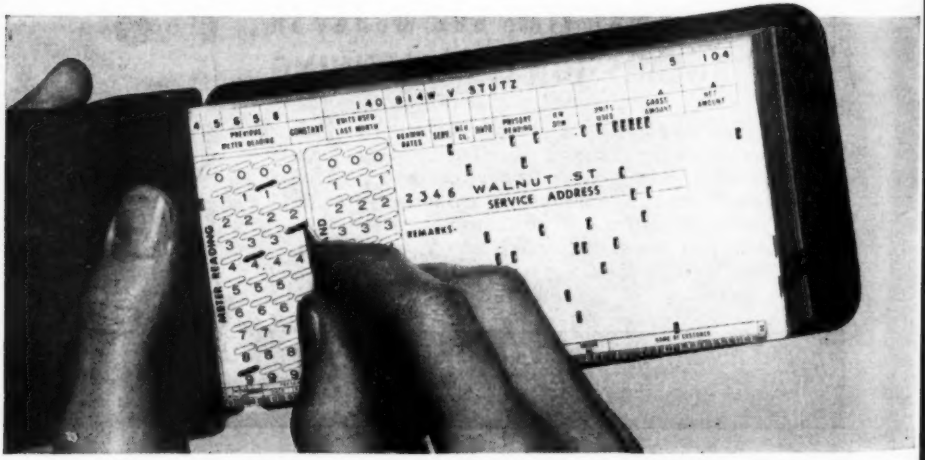


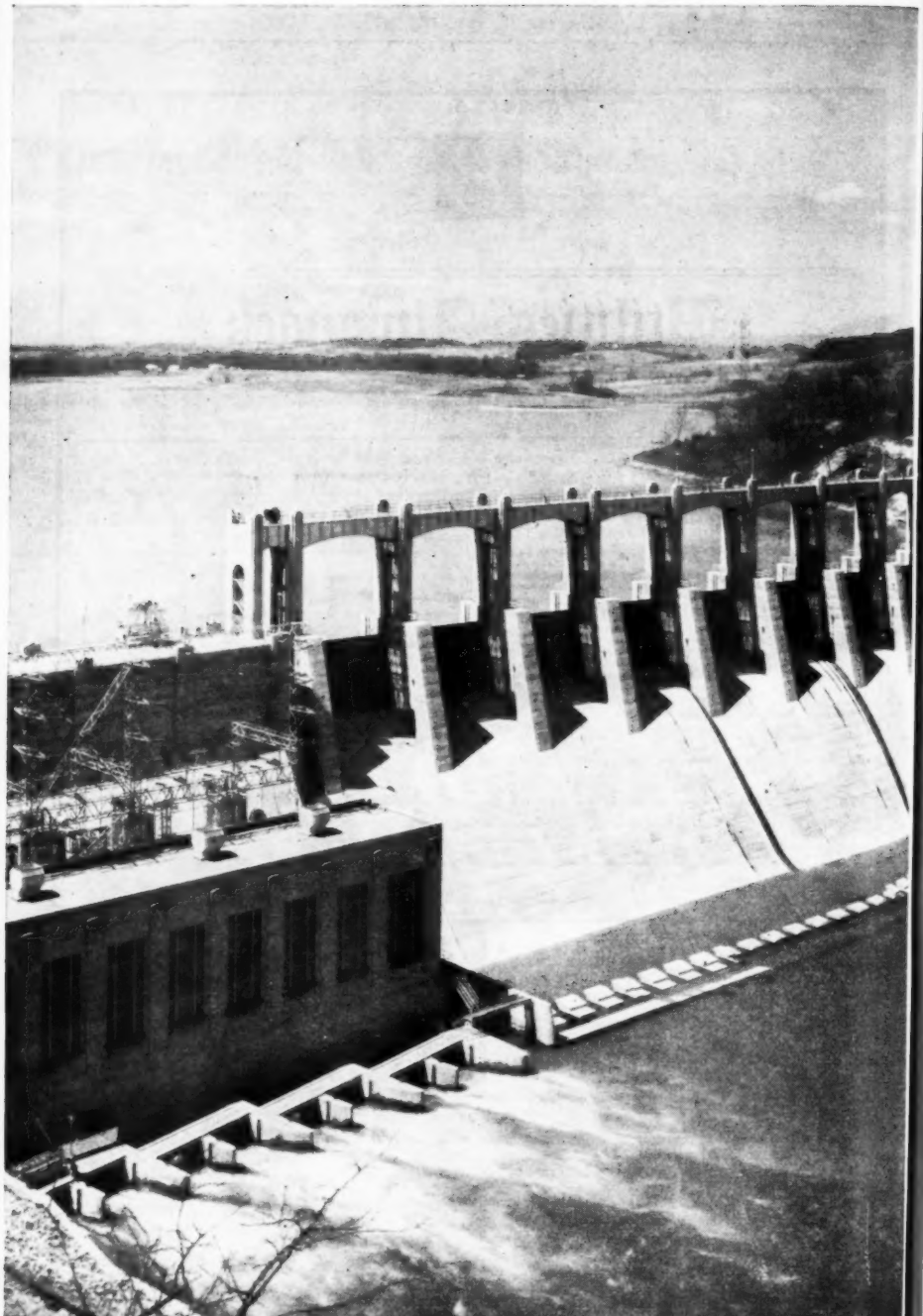
Utilities Almanack

April

23	Th	¶ *Indiana Gas Association begins annual convention, French Lick, Ind., 1953.* ¶ *Pennsylvania Electric Asso., Meter Com., begins meeting, Hagerstown, Md., 1953.*
24	F	¶ *American Water Works Association, Montana Section, begins annual meeting, Kalispell, Mont., 1953*
25	Sa	¶ *North Central Electric Association ends 2-day South Dakota all-electrical industrial meeting, Aberdeen, S. D., 1953.*
26	S	¶ *Rocky Mountain Electric League begins annual spring conference, Denver, Colo., 1953.*
27	M	¶ *Chamber of Commerce of the United States begins annual meeting, Washington, D. C., 1953.*
28	Tu	¶ *American Society of Mechanical Engineers begins spring meeting, Columbus, Ohio, 1953.*
29	W	¶ *National Gasoline Association of America begins meeting, Houston, Tex., 1953.* ¶ *New England Hotel and Restaurant Show begins, Boston, Mass., 1953.*
30	Th	¶ *American Gas Asso. begins transmission and storage conference, Chicago, Ill., 1953.* ¶ *Pennsylvania Electric Asso., Communications Com., begins meeting, Pittsburgh, 1953.*

May

1	F	¶ *Controllers Institute of America begins Pacific coast conference, Los Angeles, Cal., 1953*
2	Sa	¶ *Public Utilities Advertising Association will hold annual convention, St. Louis, Mo., May 7, 8, 1953.*
3	S	¶ *Liquefied Petroleum Gas Association begins national convention and trade show, Chicago, Ill., 1953.*
4	M	¶ *Northwestern Electric Light and Power Association, Business Development Section, begins meeting, Spokane, Wash., 1953.*
5	Tu	¶ *Edison Electric Institute, Transmission and Distribution Committee, begins meeting, Chicago, Ill., 1953.*
6	W	¶ *Wisconsin State Telephone Association begins annual convention, Madison, Wis., 1953.*



Private Hydro in Old Virginia

Claytor plant of the Appalachian Electric Power Company on the New river.

Public Utilities
FORTNIGHTLY

VOL. LI, No. 9 APRIL 23, 1953

Outlook for Hydro Redevelopment at Niagara

During the past two sessions of Congress three different ways of developing power in the Niagara area have been suggested to Congress. There is a Federal development plan, a state development plan, and a private company development plan. The author explains the different proposals and why he believes Congress should adopt a bill for private company development, of which he is a cosponsor.

BY THE HONORABLE WILLIAM E. MILLER*
U. S. REPRESENTATIVE FROM NEW YORK

BILLS providing for the development, by private enterprise, of additional hydroelectric power on the Niagara river were introduced simultaneously on January 29, 1953, in both houses of Congress. The coauthors of the Senate bill are Senators Homer E. Capehart (Republican, Indiana) and Edward Martin (Republican, Pennsylvania). The House bill was introduced by the author—a member of Congress from Niagara county, New York. These bills are identical with those introduced in the 82nd Congress by Senator Capehart and by me. This year, Chairman Martin of the Senate Committee on Public Works has joined his Senate colleague as cosponsor. Public hearings on the Capehart-Miller Bill were

*For additional personal note, see "Pages with the Editors."

conducted during the 82nd Congress by both Senate and House Public Works committees.

The bills have three stated purposes. They are:

(1) To preserve the scenic beauty of Niagara Falls and its environs. The Niagara River Treaty with Canada, dated February 27, 1950, and ratified by the Senate on August 9, 1950, provides, after making certain that there will be at all times sufficient water running over the falls to preserve the scenic spectacle, for the use of the remaining flow in equal parts by the United States and Canada for power production purposes. (It also requires that Congress specify the method by which that portion of the United States development is to be accomplished.)

(2) To further the national security. A primary condition incorporated in the bills is that in the disposition of power developed by the project, preference must be given to directions from the Department of Defense for supplying power to government installations or to industries requiring power to produce materials essential to the national security.

(3) To assure the development of low-cost electric power under the private enterprise system: The bills would commit Congress to the principle that "in view of the public burden of the increasing obligations of the United States, it is most desirable that development of hydroelectric projects be made by private enterprise and without recourse to public funds, particularly where, as here, private enterprise is able most promptly to commence actual construction of and to put the project into operation.

THE law as it now stands, and my bill, provide in substance for the issuance of a license by the Federal Power Commission to that private corporation which could demonstrate that it could commence construction promptly and prosecute it to completion. The license would incorporate all of the existing provisions of the Federal Power Act, which have heretofore been deemed fully adequate to protect local and national interests in the development of power through the use of the water of navigable rivers.

The rates would be set by the public service commission of the state of New York, and, as has always been the case, private enterprise would be restricted to rates which would provide only a fair return on investment; an investment owned, incidentally, by thousands of shareholders, all of whom pay taxes on their incomes.

IN keeping with the spirit of the times, let me say right here: I do not own a single share of stock in any power company, nor does any member of my family. It is because I believe sincerely that the system of private enterprise is what made this country great that I favor this development by private enterprise.

There are five public utilities in New York state which are prepared to see the job through. These are: Central Hudson Gas & Electric Corporation; New York State Electric & Gas Corporation; Consolidated Edison Company of New York, Inc.; Niagara Mohawk Power Corporation; and Rochester Gas & Electric Corporation.

The local company already owns the riparian lands and the rights of way required for the additional development. It would be possible for this private enterprise to start construction immediately and make additional power available far earlier than

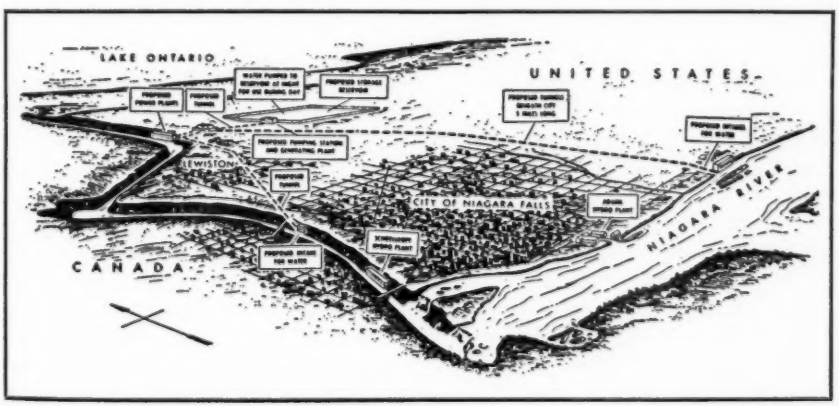
is possible under any other method of development.

THE Capehart-Miller Bill is in accord with the spirit of the policy set forth by President Eisenhower in his State of the Union Message to Congress (February 2, 1953). The President said "the best natural resources program for America will not result from exclusive dependence on Federal bureaucracy. It will involve a partnership of the states and local communities, private citizens, and the Federal government, all working together." His Secretary of the Interior, Douglas McKay, has taken this general pattern, and made more specific statements to the effect that where privately owned power companies are ready, willing, and financially able to do the job of developing power on our rivers, other factors being equal, they should be permitted to do so.

The Capehart-Miller Bill authorizes and directs the Federal Power Commission to issue as soon as practicable—to private citizens, any association of citizens, or to any corporation organized under the laws of any state — a license for the purpose of prosecuting works of improvement "for redevelopment of the Niagara river," in substantial accordance with the project plans outlined in the report of the bureau of power of the Federal Power Commission, dated September 28, 1949, entitled "Possibilities for Redevelopment of Niagara Falls for Power — Niagara River — New York."

Both Senator Capehart and I feel that we might presently succeed in passing our bill at this session of the Congress, and we have, we believe, the support of the chairmen of the respective Public Works committees —Senator Martin and Representative Dondero (Republican, Michigan).

STATE and national groups favoring the Capehart-Miller Bill include the New York State Chamber of Commerce, New York State Association of Electrical Workers (AFL), Utility Workers Union of America (CIO), New York Grange, Home Builders' Association of Westchester, Inc., the New York City Federation



of Women's Clubs, Inc., New York Federation of Labor, and several locals of the International Brotherhood of Electrical Workers (AFL).

The bill has further been endorsed by the National Association of Railroad and Utilities Commissioners, and by such organizations as the Fleischmanns-Pine Hill Rotary Club, Fleischmanns, New York, the Astoria Heights Taxpayers Association, Inc., the Niagara Falls Home Builders, Inc., and the Municipal Electric Utilities Association of New York.

I would also like to add that it has received strong editorial support from newspapers throughout the Niagara frontier and the entire state of New York, and indeed newspapers in Illinois, California, and other points throughout the country.

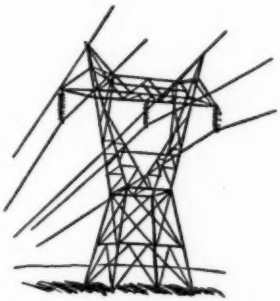
THE claim that redevelopment via private enterprise is somehow contrary to the people's interest is therefore untrue. The citizens of New York have been overwhelmingly in favor of the method proposed in the bill which I have sponsored. The so-called long-range national interests are protected by a section of the bill which provides that after March 2, 1971, any agency of the United States government created for such purpose or any such agency created by the state of New York may, upon not less than two years' written notice, take over and thereafter maintain and operate the project. In that event, the private enterprise operators would receive their net investment as that term is defined in the Federal Power Act. The amount of the new investment would be determined by the Federal Power Commission.

To protect the interests of citizens in neighboring states within feasible transmission distance of the system fed by the proposed additional hydro, there is another condition in the bill. It provides that if any state within economic transmission distance complains about its allotment of power, the Federal Power Commission may require the operators to enter into "reasonable and practical arrangements whereby project power will be apportioned equitably among those states."

The reintroduction of the Lehman-Roosevelt Bill, anticipated at this writing, could be regarded as an attempt to turn this redevelopment plan into an eastern parallel of the Snake river (Idaho) controversy. Despite the change of political party in power, I am still firmly opposed to Federal government in the power business on the Niagara frontier—or in any other area where private companies meet requirements as licensees before the Federal Power Commission.

THE history of the Federal government in the power business is the identical long, sad story so prevalent in all the pages of history wherever a central government has stretched its long arm into spheres of activity that rightfully belong to private enterprise.

For the United States government to go into the power business solely and exclusively as such is not only Socialism, but is beyond the powers of the Federal government under the Constitution of the United States. The advocates of Federal power doubtless suspect that it is unconsti-



Reasons against Government in Power Business

"THE history of the Federal government in the power business is the identical long, sad story so prevalent in all the pages of history wherever a central government has stretched its long arm into spheres of activity that rightfully belong to private enterprise. For the United States government to go into the power business solely and exclusively as such is not only Socialism, but is beyond the powers of the Federal government under the Constitution of the United States."

tutional. The Federal government is still a government of delegated powers, and no authority to go into the power business was ever delegated to it by any state under the Constitution. When TVA was conceived, the government clearly recognized the limits of its powers, and based the constitutionality of its power development on the theory that the electric energy was derived from improvements required in the interest of navigation and flood control.

When the constitutionality of TVA was before the U. S. Supreme Court in 1936, the Honorable Stanley Reed, who represented the government in that case and who is now a member of the Supreme Court of the United States, said in his argument:

> If we determine that this act, while stating that it is for navigation, national defense, or flood control, is actually for the purpose of developing power and selling it commercially, the use would be invalid.

WHAT have the Federal planners proposed, as far as power development in the Niagara river is concerned? They want to use $350,000,000 of the taxpayers' money to build the project and once the government has its foot in the door, they would come back to Congress every year for annual subsidies to support the project. Just as surely, as in the case of other Federal projects before it, the project would pay no interest on the use of the people's money. So, of course, the people would have to make up this expenditure through increases in taxes.

At the present time, Niagara Mohawk Power Corporation, and the other power companies in the state of New York that wish to develop Niagara power, pay annually to the Federal, state, and local governments over $160,000,000 in taxes. If allowed to develop and sell this power, they would pay almost $200,000,000 a year in taxes.

If the Federal government develops the Niagara project, it would pay little, if any, taxes, and there again the people through their individual tax payments would have to make up this loss of revenue. The inescapable conclusion is that if the people, as a result of government operation, receive their power for one-half cent less per kilowatt hour, they will have to pay probably two cents per kilowatt hour more through income and real estate taxes.

The people I represent want less government, not more government. If the "liberal" argument for "cheaper" power were to be carried to its logical conclusion, it could be applied to the manufacture of automobiles, rubber tires, or clothing, since if businesses engaged in those activities paid no taxes, they, of course, could sell their products that much cheaper. But the consumer would have to dig down in his pockets to make up for the annual loss in tax revenue, and he ends up just about where he started financially except that government has gotten bigger, its payrolls larger, and it has encroached upon a field heretofore reserved to private enterprise. A complete and total application of that principle of operation in all fields of economic endeavor would be total, complete, and absolute Socialism.

Supporters of the Lehman-Roosevelt Bill for Federal development will contend that such development will not affect the present ownership and operation of the private enterprise now developing power on the Niagara river. But, you know as well as I do what the eventual consequences would be. Until the private rights under the existing license expire in twenty years, they would be slowly driven out of business by a tax-exempt competitor, so that by March, 1971, the private license would not be renewed, either as an arbitrary act of government, or the fact that private enterprise now would not find itself financially able, or deem it profitable, to make application for an extension of its license.

The people in my district are considerably worried about the prospects of, in twenty years, being saddled with a great big Federal or state TVA. My people have been served well by the private utility, which has served them for seventy years, and its tax payments have been a prime source of local revenue.

On the matter of observing our international commitments, Mr. Roosevelt has stated that the international treaty as ratified by the Senate precludes the licensing of private interests under the Federal Power Act. I don't believe any member of the Public Works Committee would subscribe to that theory. If that were true, the Senate through its prerogative of ratification could remove any vital considerations of our domestic economy from the purview

of the House of Representatives.

He also raised the objection that the operation of the power plants will effect the navigation of the Niagara river. That has only recently been seriously contended by the Army Corps of Engineers, but the point is, the very purpose of the existence of the Federal Power Commission as set forth in the basic act creating the authority is to incorporate in all licenses issued for the development of power, provisions and safeguards concerning the navigability of waterways. FPC can control that feature, as it always has, with the law as it now exists, so that navigation cannot be adversely affected by development by private enterprise.

THE treaty does not in any way fix or determine who shall develop the power on the American side; whether a public agency or private enterprise shall undertake it was left for subsequent determination and is, in any event, a matter of domestic and not international concern. The treaty provides only for the 50-year availability to the United States of one-half of the flow available for the production of hydroelectric power.

No one in any department of the Federal government has ever had one day's experience in the peculiar engineering problems attendant upon the development of a power project in the Niagara river. It is conceded that the engineers of the private company, with seventy years' experience with the power problems of the Niagara river, have for twenty years had plans ready for this project. All they have been waiting for is governmental authorization. It is conceded also by all that the engineering know-how of the private companies would permit this development far more economically and efficiently. They could complete it two years sooner than could any government agency. And the area naturally can use the power.

However, if completed by private enterprise and operated by officials responsible only to the public service commission of the state of New York, the stockholders of the companies, and the public consumers, there would be no cause for fear that the rights and interests of the people were being sold down the river.

There isn't a government agency in Washington that has the record for integrity and efficiency of the public service commission of the state of New York. The "bleeding heart progressives" know very well that, as always, if a private utility develops this power, its books are open to the inspection of members of the state

¶ "THE *consumers of power in New York state, the employees of the private utilities, and the taxpayers of every state in the Union, and every decent American who believes that private enterprise has made this country stronger, and the people happier than in any other country in the world, are the forces that are interested in taking over Niagara Falls under a system of private enterprise.*"

public service commission. Furthermore, its rates are set by the public service commission so that there never has been and never could be any "exploitation" of natural resources by a private utility. By law, the private utility secures, after expenses, only a fair return on investment, which is distributed to the hundreds of thousands of stockholders who also pay taxes on that income to the Federal government.

MR. TRUMAN was mistaken when he stated last spring that the "forces of reaction . . . want to take over Niagara Falls for private development." The consumers of power in New York state, the employees of the private utilities, and the taxpayers of every state in the Union, and every decent American who believes that private enterprise has made this country stronger, and the people happier than in any other country in the world, are the forces that are interested in taking over Niagara Falls under a system of private enterprise. They are interested in keeping that area free from the inefficiency of big government which it is the policy of the present administration to extricate from those fields in which it never rightfully belonged.

I live in the Niagara frontier, and were I under oath, I would state to you that 99½ per cent of all of the hundreds of communications I have received from the people of the state of New York—and I am speaking of consumers—99½ per cent are in favor of private enterprise. All of the labor unions, representing workers in the power industry in New York state, are for private enterprise. So, since the stockholders and managers of the private power companies, the consumers and customers, the employees and workers do not want Federal development, who under God's heaven is included in that group that so many seem to be so solicitous about? If the desire of the public is to be the public policy, then this power project should be developed by private enterprise.

"THERE *appears to be a good chance that our future Federal water resource policy, particularly with regard to major river basins, may become a constructive influence rather than a rallying point for Socialists.*

"For example, interest is beginning to develop among leaders in the conservation field for the appointment of an individual with a conservation background to the Federal Power Commission. This would be a logical step as the law authorizes the commission to facilitate the comprehensive development of waterways. In the opinion of at least one qualified observer, 'The Federal Power Commission could be useful in pulling together our natural resources situation. If a common, integrated program ever eventuates, through the action of the President and Congress, some member of the Federal Power Commission ought to be qualified to see where it fits into a co-ordinated resources plan.'

"Heretofore many top officials have paid lip service to conservation in promoting Federal hydroelectric power projects. But their primary concern has long been socialization of a basic industry, electric power. Consequently, billions of tax dollars have been wasted and conservation has suffered. The time has now come to change this."

—EXCERPT *from Industrial News Review.*

Are Fictions of Law and Accounting Confiscatory?

The question of value of service has long been a controversial and disputed issue in public utility rate regulation. Here is a forthright view of the actual effect of accounting practices on the equities of the public utility investor through the process of rate regulation.

By WILLIAM M. WHERRY*

One of the most fascinating experiences of the lawyer who practices before boards and commissions is presented by the study of today's rate cases, compared with those of the past.

Only twenty years ago, lawyers felt that certain principles had been firmly established by a series of cases which protected private property owned by public utilities against confiscation through rate making. In 1930, we all know that events took place which completely changed the picture.

If one compares recent cases with those decided during the inflation of 1914 to 1930, we find the ratepayer favored as against the investor through fictions of law and accountancy, which often strained conceptions of equity or common sense.

The framers of the Constitution, who realized that freedom would be of little value if private property were not protected, would be astonished today if they could see the extent to which the constitutional prohibition against its confiscation has been overshadowed by enlargement of police power. Earlier exceptions to this trend which were observed in the field of public utility rate making have, today, all but disappeared. Not since Jeremy Bentham wrote his criticism of the abuse of fictions of law has there been such a fascinating example in the science of jurisprudence. These fictions even changed the meanings of words completely and converted certain legal ac-

*For personal note, see "Pages with the Editors."

tions and procedures into their exact opposite. Speaking of *"fictio"* in Roman law, George Long says:

> The Praetor in many cases while he framed his formula with reference to some old-established rule of law, gave it a wider application. He could direct the Judex to decide in a given case as if certain facts existed which did not exist. (Vervine Ora. Note on Edicta Mag. page 161.)
>
> This is the essence of a legal fiction.

OF the six classes of legal fictions enumerated by W. D. Lewis in the treatise which he read in 1856, in London, before the Juridical Society, we find in recent cases these two: "An imaginary premise in law for an actual conclusion," and "A device invented for producing a desired legal consequence."

One of the most oft-repeated statements by courts called upon to review orders of a board or commission is that the latter are better equipped than courts for establishing facts. Yet we know as a matter of practical experience that commissions and boards are appointed by governmental authority, which often has a *political* objective, as well as the presumed duty to seek justice. Whether resulting findings of fact are colored by preconceptions is at least debatable. The situation recalls the witty remark attributed to Socrates (B.C. Circa 469-399) to the effect that one would not select a cook or a fiddler by popular vote. Why, then, should there be any presumption approaching the infallible in the "findings of fact" of boards and commissions?

Bentham challenged a similar attitude of the British courts as "puerile, even in conception," and furthermore as "A willful falsehood having for its object the stealing of legislative power by and for hands which cared not or durst not openly claim it and, but for the delusion thus produced, could not exercise it."

THIS and similar criticism brought about reforms. Lord Raymond refused to consider a fiction of law uncontradictable. He held that whenever such a fiction works an injustice a court of law must look into the real facts, and in Lyttleton *v.* Cross (# B & C 317), he proclaimed his faith in sonorous Latin, *"Fictio legis inique operatur alcui damnum vel injuria."*[1]

It remained for our less classically minded modern courts to invoke fictions of law to "work a wrong," by assuming "findings of facts" by commissions are true and not subject to contradiction even though injustice could actually be perpetrated by failure to "look into the real facts" and substitute reality for fiction.

The most persistent case of fiction masquerading as fact in these so-called "findings of fact" is that the dollar is a dollar, is a dollar simply because it is called a dollar. Forty years ago, the contention was made that the property of a utility which was entitled to constitutional protection against confiscation was to be valued as if the state were taking the title and not the use. It was the value of the property which was to be protected.

[1] Freely translated: "A fiction of law works unjustly somehow whether it be a legal detriment or an actual injury." Of course, the Romans and Lord Coke (1552-1634) had beaten him to it: *Ultres magis valeat quam pereat,* 13 Rep 21, 2 Rep 30a 296. "Increasing value is greater than that which disappears with time."

Today, courts sustain commissions in their assertion that they are finding the value when they take costs as shown by books of account with entries prescribed by commissions and imposed upon the companies. Early costs are taken as if the purchasing power of the dollar had not changed permanently during the past decades. Not only that, but by another fiction the cost is that incurred at an earlier date by a *predecessor* utility. This fiction had its parallel in the bankruptcy courts, as was pointed out by Lewis in the treatise above referred to.

FURTHERMORE, the determination of this "aboriginal cost" is invariably a one-way street. In looking back over the past records, scanty at best and not kept with the ingenuity of modern accountants, every item erroneously charged to capital is deducted, yet the utility is not allowed to include in capital those items which were erroneously omitted from the capital accounts. This suggests the story of the man who found himself going in the wrong direction on a one-way street. When a cop came up to him, he said "Excuse me, I am taking my mother-in-law to the hospital." The cop took a look at the old lady and said, "I've got one at home just like her. Go ahead, buddy."

Even if we could admit the validity of the assumption that a fair rate can be calculated on a cost basis, these fictions are capable of producing injustice and warrant the criticism of a modern Bentham.

Could the real trouble be that the task has been wrongfully conceived in the first place? The duty of the regulatory body is to determine the value of the service rendered and its requirements (that is to say), not only for today, but for the future. This can easily be lost sight of, in the endeavor to avoid rate increases.

AN illustration is found in connection with depreciation. Utilities are not permitted to establish sufficient reserves to meet the advancing costs of replacing property at a time when the dollar, so called, does not buy what it used to. This could destroy the possibility of the utility's rendering adequate service. It is a logical result of not basing rates on the true value of the service but upon some fiction.

Similar to this is the denial of requisite working capital on the theory that the reserves set aside to meet taxes and other costs can be considered working capital. Any individual who underestimates his income for Federal tax purposes knows how misleading this fiction can be when he wakes up and finds that he has treated all his earn-

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ings as working capital and has to sell investments to pay his taxes.

Today, the fine old axiom that there is a distinction between management and regulation is going by the board. Regulation is steadily usurping the function of management, where it pleases to do so, with minor exceptions.

The controversy over what is a reasonable rate of return produces a dozen illustrations of the use of fictions in findings of imaginary facts to support desired consequences. Regulators often pay little attention to the estimate of the management and its financial advisers as to what is necessary in order to finance the improvements and additions to the property essential to meet future demands on the service. They substitute some narrow accounting or financial speculation and make a so-called "finding of fact." They would do well to bear in mind Bentham's denunciation of such fictions as "the irreconcilable enemy of justice."

Parallel with this difficulty is the exclusion from the rate base of all investments in property held for future use, not immediately put into service.

THE same issues above outlined were presented to the courts thirty years ago in the preceding period of inflation. Similar fictions were invoked but the courts did not then treat these fictions as facts when they resulted in injustice. A single illustration should suffice:

A group of cases arose in one of our eastern states and found their way into the highest courts, both state and Federal. Eight companies were involved. They supplied territory which was contiguous. Their sources of water supply were taxed to the limit of their capacity and their managements recognized that steps should be taken to secure large additional supplies. They tried to increase their rates to get sufficient revenues to meet this pending need of the service. Schedules were filed with the state commission, which was one of the most enlightened of that day. In every case the rates devised by the managements were reduced by the commission.

In every case the fiction was advanced that the cost of the properties represented their true value, even though those costs were expressed in dollars which could no longer buy anything like the labor, materials, etc., that they could earlier. Depreciation was calculated by an entirely theoretical method, without any regard to the difficulty of replacing obsolete and outworn machinery and pipe or securing additional real estate for reservoirs and watersheds. The rate of return was limited to 5½ per cent instead of 6½ per cent (the bankers' estimate). It was sought to compel the stockholders to jeopardize their investment by increasing fixed charges through bond issues which the financiers considered excessive. Pipelines which had been bought in anticipation of a growth in the population were "found" to be "overbuilt" and the excess was disallowed as "not used and useful." The cost of laying pipe was reduced on some theory which disregarded the actual experience in the territories served.

ON appeal these cases were reversed by the courts. Larger values were established to reflect the decline

Regulatory Balance Favors Ratepayer

"If one compares recent cases with those decided during the inflation of 1914 to 1930, we find the ratepayer favored as against the investor through fictions of law and accountancy, which often strained conceptions of equity or common sense. The framers of the Constitution, who realized that freedom would be of little value if private property were not protected, would be astonished today if they could see the extent to which the constitutional prohibition against its confiscation has been overshadowed by enlargement of police power."

in the purchasing power of the dollar and to correct some of the injustices due to the "findings of fact." Thereupon, the companies were consolidated and the commission approved of the issuance of new securities on the values fixed by the courts in the rate cases.

New rates were filed as a step in the project which the consolidated companies had undertaken jointly in order to finance and procure additional sources of supply. According to the testimony in the case, to do this financing would require the estimated net earnings which the new rates would produce. The commission did not take into account at all these requirements. In fact, instead of realizing that its true function is to value the service demanded instead of carrying out some socialistic theory of limiting earnings, the commission denied the increases in large part. The companies were confronted with a clearly demonstrable and very serious condition which threatened their ability to continue to render adequate public service to the communities which they were chartered to serve.

Injunctions were obtained. The courts, fortunately, did not take refuge in the fiction that findings of fact by so-called experts could not be examined to determine whether injustice was being done. They reviewed the evidence, reversed the commission, and set aside the rates it had fixed. The communities served were thus protected by permitting the companies to earn sufficient revenues to perform their public function.

The companies at that date—over twenty years ago—were able to

invoke remedies against confiscation of their property, although they were confronted with many of the same obstacles which lie in the paths of the managements of utilities today. It seemed to their counsel as if precedents had been established which would prevent confiscation of utility property by fictions of law. No one participating in rate cases today can be similarly assured or even optimistic.

Twenty years afterwards, the same commission (but with a different membership, of course) rewrote the capital accounts of the company so as to reduce the capital accounts on which its securities had been issued on the ground that the consolidation was "not an arm's-length transaction," or through some other fiction, so that the costs in the capital account became aboriginal costs (that is, costs incurred by other and earlier companies) and not in any sense of the word the true cost of the property or any accurate measure of its value.

What could be more discouraging to those of us who worked for law reform and hailed the establishment of public utility commissions equipped with staffs of accountants, engineers, and lawyers and given power to disregard shackling and obsolete rules of evidence so as to be able to ascertain facts scientifically by pretrial conferences held with fair-minded and impartial experts?

NEVERTHELESS, the modern practitioner will not want to become wholly a Jeremiah of despair nor such a follower of Jeremy Bentham as not to be able to see some possible good in legal fictions when properly used.

After all, Blackstone did have some grounds for his somewhat superficial praise of these devices.[2]

Let us confine ourselves to a small example in the field of public utility law where the use of an ancient fiction was used to promote justice rather than to defeat it.

THE question is often asked how can you measure the value of service. Truly, that is not an easy problem. One cannot capitalize the earnings since they depend upon the rates charged and the reasonableness of the rates is the very point in issue. On the other hand, it cannot be said that the value of the service can be obtained by determining a net return on a rate base measured in dollars which are no longer dollars, and where the tendency of the regulatory staff is to reverse every fact against the investor. Carried to extremes the original cost accounting would insist that the well supply of a water company should be recorded on company books as what the Indians were paid for it; *viz.*, a musquette, a bag of shotte, a "kag of powder," and a "Barrelle" of "Ye Goode Olde Rhum," which articles constituted the true *"aboriginal"* cost thereof to the forefathers who "first dedicated it to public use!"

This problem was presented to Canadian courts as a question of *reasonableness* of rates. There was no express constitutional prohibition against taking property for public use without compensation, but the commission *was* required to prescribe

[2] We will have to leave to the legal reader the exploration of the usefulness of fictions resulting in improvements in the jurisdiction of the courts, especially the Queens Bench, and in ejectment, guardianship, trespass, common recoveries, and hereditaments.

"just and reasonable rates." The Canadian courts, twenty years ago, arrived at the same formula invoked by the American courts for determining the value of the service in constitutional cases. That formula was based on a fiction created for the purposes for which fictions were devised in Roman law and by the early lawyers at whom we laugh today; *viz.*, "for the purpose of *advancing justice*" not to *defeat justice.*

ONE was asked to assume a person who desired the service not only at a given minute in time but for an indefinite period in the future which could be reasonably forecast. This fictitious person was also assumed to be ready and able to pay the true value of that service. In other words, he could build the plant and make all the investment which would be necessary to secure the service over the period assumed. There was also to be assumed another fictitious character; namely, the owner of the plant which was providing the service. One further assumption was made; *viz.*, that this fictitious owner was willing to meet the fictional purchaser and sell the plant, facilities, and charter at a fair price.

Now what, said the court, would be the fair and reasonable value of the service as determined by these two fictional characters?

Assuming this hypothesis and applying common sense, the court held (1) a reasonable rate is one which fairly reflects the value of the service rendered; (2) the best measure of the present value of the plant to the purchaser would be what it would cost him to reproduce it at the present time under current conditions; (3) the owner of the property would naturally not expect to get the full reproduction cost—he would merely expect a reasonable profit on his original investment; (4) the purchasers of the service would rather pay that sum than take the risk of investing even a smaller sum for the same plant; and, finally (5) the same common sense approach should be made in determining all other issues except that the judgment of the management would prevail in determining operating expenses, necessary reserves, and financial requirements.

THIS was a realistic method of using a fiction. The court partly relied on The Canadian Southern Railways Co. *v.* International Bridge Co. (1880) 8 AC 723, 731, which was followed by the United States Supreme Court in Cotting *v.* Kansas City Stockyards Co. (1901) 183 US 79, 96. These are cases well worth rereading today, as is also Board *v.* New York Teleph. Co. (1926) 271 US 23, 32, to cite but one

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other, discussing rate making from the point of view of value of service.

It might also be apropos to recall Lord Lyttleton's opinion and the cases cited in Hibberd *v.* Smith, 67 Cal 547, 561, 56 Am Rep 726 at 738, and Broom Legal Maxims, page 128, which denounced use of fictions to defeat justice. Sooner or later courts must meet the criticisms of the use in rate cases of fictions, and insist on a more realistic and just approach.

After all it was in an effort to do justice that the great commonwealth of Massachusetts refused to follow William Jennings Bryan's proposal in Smyth *v.* Ames (1872) 169 US 466. It will be remembered that Bryan claimed a railroad should not be allowed to earn on the value of its investment in rails and other properties, because, since they were bought, prices had fallen and they could be replaced more cheaply. He ignored the fact that the expansion of the property had had to be made at a time of high prices because of the requirements of the service. The management could not wait for a decline as Carnegie did when he built his steel plants. Therefore, it would be unjust not to take into consideration the original cost in fixing a rate, even though (due to the change in the value of the dollar) reproduction cost could be used as a plausible device to reduce the value of the property by destroying its earnings potential. This led to the birth of the Massachusetts theory of (not "aboriginal cost" but) "prudent investment." This theory was administered by Charles Francis Adams, one of the wisest and fairest of commissioners. He worked out what was best for the service and equitable and fair to investor as well as consumer. His decisions were accepted, though he had far less power than the humblest of modern boards and commissions.

We may hope that, sooner or later, the demands of the service will bring some such practical concept once more into play. That this day may not be too far off is presaged by some very recent opinions. Several Federal court decisions have refused to concede the infallibility of the Federal Power Commission and have treated technicalities as something subject to review. At least one state commission has intimated that the management of a utility may possibly have sound ideas in planning for future expansion. The highest courts in three states have critically examined the dollar which can no longer conceal the sad state of its purchasing power; and at least one of them has condemned, as a "nebulous formula," a fiction dealing with fair rate of return.

Let us not forget the age-long tradition of jurisprudence which slowly but surely brings reforms to correct injustices.

"In my opinion the most important problem facing business today is that of insuring a caliber of managerial leadership that will measure up to the tasks ahead."

—Crawford H. Greenewalt,
President, E. I. du Pont de Nemours & Company.

Dreams the Taxpayer Didn't Have to Pay for

PART II

The first instalment of this 2-part series discussed private company utility investments which are of positive benefit to the taxpayers, in addition to their strict utilitarian function. In this concluding instalment, the author covers developments in Alabama, California, Georgia, Idaho, Maine, Missouri, Montana, North Carolina, Virginia, Washington, and Wisconsin.

BY J. LOUIS DONNELLY*

PRIVATE companies have encountered considerable difficulty in river development in those areas where government-financed agencies have sought to gain a foothold. A notable example of this has been the dispute between Virginia Electric & Power Company and the Department of Interior.

In contrast there has been encouragement to private development of rivers in the power-short Northwest which needs additional energy to supplement the supply furnished by government-owned projects. However, the Interior Department has been an exception in this area in its opposition to plans of Idaho Power Company. A better relationship is anticipated under the new administration at Washington.

The history of the efforts of the Virginia Electric & Power Company (Vepco) to build a hydroelectric plant on the Roanoke river is one of numerous delays. Vepco filed its application with the Federal Power Commission for a license October 6, 1948. Public hearings were held in May and June of 1949 with the Interior Department intervening. A decision of the trial examiner favorable to the company was filed in March, 1950, but subsequently the case was reopened on petition of the Secretary of Interior. Hearings were then held in June and July of 1950 and in November of that year the

* Member, editorial staff, New York *Journal of Commerce.*

trial examiner again ruled in favor of Vepco. After oral argument, the Federal Power Commission ruled on January 26, 1951, giving Virginia Electric the license to construct the dam.[1]

Subsequently this case was appealed by the Interior Department and the Fourth U. S. Circuit Court of Appeals unanimously decided in favor of the utility company.[2] Last month the United States Supreme Court upheld the U. S. Circuit Court of Appeals.

The action has attracted nationwide attention in view of the effect of the decision on other projects pending or proposed.

VEPCO announced it planned to build a plant with a capacity of 91,000 kilowatts. The dam and power plants would represent an investment of more than $27,000,000.

Virginia Electric received permission from the Federal Power Commission to suspend construction pending final court decision.

In addition to the Roanoke Rapids project, Vepco has applied to the commission for a license permitting construction of an 87,000-kilowatt hydro plant on the Roanoke river at Gaston, North Carolina, which is also estimated to cost $27,000,000.

General approval has been given by Congress for a plan of developing the Roanoke river basin through the construction, in addition to the Kerr dam, of ten hydro developments with a total estimated installed capacity of 384,000 kilowatts. Except for the Philpott project, 14,000 kilowatts, now completed, no funds have been appropriated except for study. Two of these sites are Roanoke Rapids and Gaston.

The John H. Kerr dam, located 50 miles up the Roanoke river from Roanoke Rapids, is primarily a flood-control dam and will be a source of electric power. Installed capacity has been placed at 108,000 kilowatts before the end of 1952, to be increased to 204,000 in 1953. The power is to be marketed by the Southeastern Power Administration, an agency of the Department of the Interior. Two-thirds of the Kerr dam power is to be disposed of within the company's service area pursuant to an agreement executed last year with Southeastern and is to be marketed solely through the company's transmission system.

NATIONAL attention should be attracted to the development of the Clarks Fork river which supplies electric energy to three states: Washington, Idaho, and Montana.

Two companies, Washington Water Power and Montana Power, are involved in this development.

Washington Water Power Company is now operating the first unit in its new Cabinet Gorge plant in northern Idaho. When completed it will have four 50,000-kilowatt generators and cost some $46,000,000. It will be Idaho's largest hydroelectric development.[3]

The Federal Power Commission granted permission to build the 200,000-kilowatt plant in early Janu-

[1] 87 PUR NS 469.
[2] 91 PUR NS 366.
[3] See "Private Enterprise Builds a Hydro Dam in the Northwest" by Roscoe Ames. PUBLIC UTILITIES FORTNIGHTLY, Vol. XLIX, No. 1, January 3, 1952, page 21.

ary, 1951. This was quickly followed by the state of Montana clearing the last legal obstacle, passage of legislation permitting storage of water in that state.

Cabinet Gorge is located about one-half mile west of the Montana-Idaho state line.

The job of diverting the turbulent Clarks Fork river (18.410 cubic feet a second mean annual flow) is described as one of the most difficult ever encountered in North America.

Twin bores 1,000 feet long and 29 feet in diameter were driven through solid rock of the peninsula formed by the Z-bend of the river to handle 40,000 cubic feet a second. An innovation of cofferdam construction took place in August, 1951, when 63,000 pounds of high explosives ripped some 70,000 cubic yards of rock from a 200-foot canyon wall to bridle the river. An intricate plan had been devised to reduce flow of the river to a minimum, with upstream plants of Montana Power Company having shut down on a tight schedule in the preceding forty-eight hours. This has been described as a gamble around which the whole diversion practice hinged but it worked, as did others taken earlier and later.

THE shot served to turn the river flow into the diversion tunnels until an additional upstream cofferdam and another downstream barrier could be thrown across the channel. With more than 300,000 cubic feet of fill in the river, dewatering was still a real problem and pump capacity at one time was stepped up to 130,000 gallons per minute to handle the situation. Concrete pouring started in November, 1951, and continued through the winter with aggregate mixtures being preheated by steam-pipes, and by salamanders and pots during pouring. Another important deadline was met when the dam was up to the sill of its spill gates by early April, 1952, accommodating the spring runoff that peaked at 81,000 cubic feet a second on May 21st, somewhat under the usual annual flood.

The fourth and final generating unit is scheduled for installation early in 1953.

Naturally, Washington Water Power is well proud of its work in building Cabinet Gorge under adverse circumstances. It is asserted that this proves without doubt that business-managed utilities can do the job as efficiently and as quickly as Federal bureaus, without expenditure of tax dollars. This is described as the answer for those who choose that free enterprise and the American way of life should be continued.

❦

¶ "PIONEER *in river development in the Northwest . . . is the Montana Power Company. Development of the Clarks Fork river system was started early in this century by this utility company. It has progressed since on the basis of orderly private company development designed to assure western Montana of ample electric power supplies, now and in the future.*"

Washington Water Power is exploring, under a preliminary permit from the Federal Power Commission, the next available site upstream on the Clarks Fork. It is at Noxon Rapids, Montana, 24 miles above Cabinet Gorge. The permit has been extended to October 31, 1953. During the summer of 1952 the company was diamond drilling at the site to determine feasibility of the project. Project costs and extent of possible production cannot be estimated until the studies have been completed.

PIONEER in river development in the Northwest, of course, is the Montana Power Company. Development of the Clarks Fork river system was started early in this century by this utility company. It has progressed since on the basis of orderly private company development designed to assure western Montana of ample electric power supplies, now and in the future.

The initial project was the Flint Creek dam and power plant. Electric power developed at this site is small (1,100 kilowatts) but the installation is of importance as the dam forms a reservoir known as Georgetown Lake with a capacity of 30,000 acre-feet. Today the lake is one of the state's popular recreation areas. Flint Creek is located on a tributary of Clarks Fork about 35 miles above its confluence with the main river.

FIRST power development on the main stem of the river in Montana is the Milltown plant of Montana Power located eight miles east of the city of Missoula, leading city in western Montana. The dam and generating station, completed in 1906, develop 3,400 kilowatts.

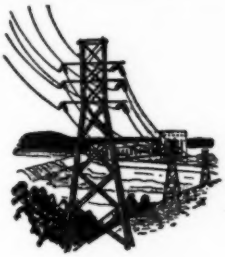
About 60 miles upstream from the Idaho border and Washington Water Power's Cabinet Gorge plant is the Thompson Falls plant of Montana Power. A concrete dam 35 feet in height is built on a 15-foot natural falls, providing a head of 50 feet. The dam creates a reservoir of 14,970 acre-feet. The power plant has an installed capacity of 35,000 kilowatts and was constructed in 1915-17. Power from this station serves the Milwaukee Railroad, which is electrified through the western part of Montana. It also serves the important mining industry in the Coeur d'Alene area of Idaho.

Montana Power Company reports to us through Colin Raff that the Clarks Fork and its tributaries will have a part in its continuing policy of providing ample supplies of electric power for its customers ahead of actual demand.

Thompson Falls has been studied for possible additional generation within the next several years. Montana Power now has a preliminary permit from the Federal Power Commission to study the feasibility of power generation at Trout Creek, which is located on the Clarks Fork about 21 miles below Thompson Falls.

NEWEST and largest hydro plant of Montana Power is the Kerr development on the Flathead river just below the outlet of Flathead Lake, one of the largest fresh water lakes in the western United States.

Kerr's arch-type concrete dam is 204 feet high and 800 feet long on top and provides storage of more than



How Maine's Antiexport Law Works

"ELECTRIC companies operating in the state of Maine have no problem of national government interference. Maine law forbids the export of hydroelectric energy by corporations, except those which have specific charter authority or were exporting such energy at the time of the adoption of the law in 1909. Central Maine Power Company does not come within the exceptions."

1,000,000 acre-feet in Flathead Lake.

The original power station was built in 1938 and a second generating unit was added in 1949. Work is now under way on a third unit, due to be in operation in 1954. The Kerr plant now has an installed capacity of 112,000 kilowatts and this will be increased to 168,000 when the third unit is in operation. It will be possible to add a fourth unit when the need arises.

One of the largest private power developments in the Middle West is that of Union Electric Company of Missouri on the Osage river.

Union Electric has one plant on this river, located near the village of Bagnell, Missouri. When it was placed in operation in October, 1931, it contained six units with a total rating of 129,000 kilowatts. Provisions were made in the structure for the addition of two more units and the company is now engaged in installing them. When they are in operation about the middle of 1953, the total rating of the units will be 172,000 kilowatts.

Actual capability of the plant exceeds the name-plate ratings. Under medium river flow conditions, the capability of the six units is 160,000 kilowatts and with eight units will be 205,000.

ANOTHER privately owned company having difficulty with the Department of the Interior is Southern California Edison. Application was filed with the Federal Power Commission for separate licenses to authorize the construction of a new storage reservoir in Vermilion valley and a new hydroelectric power plant at Mammoth Pool, both in the Big Creek-San Joaquin river area. The Interior Department Secretary recommended to

the commission that it not issue a license to the company for the Mammoth Pool project because investigations were being made of the power site and others in the Upper San Joaquin river area with a view toward the development thereof by the Federal government. There was no opposition to the Vermilion valley reservoir license, provided certain restrictions and conditions are met and subject to the further condition that an operations contract be agreed upon. Later the Secretary of Interior withdrew for reclamation purposes certain lands along the upper reaches of the San Joaquin river, including lands necessary for the development of the Mammoth Pool project. Work on the Vermilion valley project would start in 1953.

Southern California Edison has a record of forty years of water-power development of the Big Creek-San Joaquin river area in Fresno and Madera counties in California. The last High Sierra construction completion was Big Creek plant No. 4 in July, 1951. That station added 91,000 kilowatts of capacity.

Company's presently operating facilities in the area include six powerhouses, three major reservoirs—Shaver, Huntington, and Florence lakes—and thirteen major dams, providing a total generating capacity of 530,000 kilowatts. The proposed new projects would be integrated with this system.

It was estimated that the new generating station and two new reservoirs would cost $45,000,000 to $50,000,000. The capacity of the two dams would be 248,000 acre-feet. The Mammoth Pool station would have a generating capacity of 126,000 kilowatts in two units. It was estimated that the electric energy generated at Mammoth Pool would average 550,000,000 kilowatt hours a year, and the additional water made available for use at Big Creek powerhouses Nos. 3 and 4 would result in an annual average gain of 86,000,000 kilowatt hours from those stations.

The new reservoirs and generating stations, together with the average increase of output of existing stations to be made possible by the increased usable supply of water from the new projects, it has been estimated, will result in an annual average gain at Big Creek of 758,000,000 kilowatt hours. Southern California Edison claims that more kilowatt hours of electricity per unit of water are generated at Big Creek than at any other hydroelectric development in the world and that in falling 6,000 feet through the power plants it is the hardest-working water on earth.

Southern California Edison can well be proud of what it has accomplished in the Sierra Nevada mountains. When work started back in 1911 the Big Creek area was a vast and virgin wilderness. Today this mountain water is used and reused many times to generate needed electricity and then released to irrigate the valley below. The man-made lakes are popular vacation resorts, visited annually by thousands.

The story of Big Creek has been written by David H. Redinger (Angelus Press, Los Angeles, 1949). This was written by the resident engineer as a report and history for the

records of Southern California Edison.[4]

W. C. Mullendore, president of Edison, in the foreword to this book describes it as a document "of too great significance to be buried in the archives of our company."

"What is the significance?" asks Mr. Mullendore. "It is an outstanding story of the golden age of American development. Here again is a stirring and inspiring example of the work of free men, self-reliant men, men who did not wait to have society or government underwrite the risk."

The history of Big Creek is described as filled with ingenious engineering "firsts" in the solution of construction problems. These include the building of a railroad into the High Sierras in 157 days; unprecedented road building, tunneling, and dam building; rigorous winters spent in snowed-in construction camps; and many seemingly impossible obstacles.

ACTIVE pioneers in development of river basins in the southeastern part of the United States have been Alabama Power Company and Georgia Power Company, subsidiaries of the Southern Company.

Alabama Power Company has built

[4] For review of this book, see PUBLIC UTILITIES FORTNIGHTLY, Vol. XLV, No. 8, April 13, 1950, page 512.

POWER SUMMARY
SACO-ANDROSCOGGIN-KENNEBEC RIVERS

	Present MKWH—%		*Future* MKWH—%		*Ultimate* MKWH	
Generation						
Saco	225	83	46	17	271	— 100%
Kennebec	802	64	447	36	1,249	"
Androscoggin	952	80	235	20	1,187	"
Total	1,979	73	728	27	2,707	"
Androscoggin (New Hampshire	280	63	163	37	443	"
Androscoggin (Maine	672	90	72	10	744	"
	MW—%		*MW—%*		*MW*	
Capacity						
Saco	41.8	84	7.7	16	49.5	— 100%
Kennebec	176.8	45	212.0	55	388.8	"
Androscoggin	150.8	78	42.5	22	193.3	"
Total	369.4	58	262.2	42	631.6	"
Androscoggin (New Hampshire	36.9	55	30.0	45	66.9	
Androscoggin (Maine	113.9	90	12.5	10	126.4	
	Feet—%		*Feet—%*		*Feet*	
Heads						
Saco	276	87	40	13	316	— 100%
Kennebec	508	60	345	40	853	"
Androscoggin	809	78	229	22	1,038	"
Total	1,593	72	614	28	2,207	"
Androscoggin (New Hampshire	306	62	184	38	490	"
Androscoggin (Maine	503	92	45	8	548	"

three plants on the Coosa river and a similar number on the Tallapoosa river. Total rated installed capacity of these plants aggregated nearly 490,000 kilowatts.

Georgia Power Company has three hydro plants on the Chattahoochee river, two stations on the Tallulah river, and two on the Tugalo river. These together with 14 small plants have a total rated installed capacity of more than 350,000 kilowatts.

During the dry season the flow of the Coosa river is below plant capacity and some advantage is taken of night pondage to increase the generating capacity during peak-load hours. At Martin dam, the uppermost of the three Tallapoosa river plants, there is storage capacity equivalent to approximately 300,000,000 kilowatt hours of possible generation at the Martin, Yates, and Thurlow stations.

The Burton-Mathis reservoirs for the north Georgia group of storage plants on the Tallulah and Tugalo rivers have a storage capacity sufficient to generate some 120,000,000 kilowatt hours; the amount of useful storage for the plants on the Chattahoochee river is equivalent to some 23,000,000 kilowatt hours, and for the storage plant on the Ocmulgee river is equivalent to some 5,800,000 kilowatt hours.

ELECTRIC companies operating in the state of Maine have no problem of national government interference. Maine law forbids the export of hydroelectric energy by corporations, except those which have specific charter authority or were exporting such energy at the time of the adoption of the law in 1909. Central Maine Power Company does not come within the exceptions.

To date Central Maine Power has not come under the jurisdiction of the Federal Power Commission other than to furnish statistical and financial reports.

Nearly three-fourths of the generating capacity of the Androscoggin, Kennebec, and Saco rivers has been developed thus far by Central Maine Power and other private corporations. They rank among the best waterpower streams in the United States east of the Mississippi river.

The three rivers account for 90 per cent of Central Maine Power Company's hydroelectric generating output.

Currently there are 22 hydroelectric developments located on the Androscoggin. These include six owned by the Brown Company, two by Public Service Company of New Hampshire, all located in the state of New Hampshire, and in Maine two plants operated by Rumford Falls Power Company, four by International Paper Company, three by Central Maine Power Company, two by Androscoggin Water Power Company, and one each by Worumbo Manufacturing Company, Union Water Power Company, and by Verney-Brunswicke. Five developments on this river, four located in New Hampshire, appear to have sound future economic possibilities. This river is 80 per cent developed.

CURRENTLY ranked second in hydro development, the Kennebec river offers possibilities of additional development which could make this the largest power producer.

At present there are ten developments on this river, including one under construction at Indian Pond due to be completed in 1954. This will have 45,000 kilowatts initially with provision for an additional 30,000 unit to be installed at a later date. Largest station of Central Maine, and located on the Kennebec, is the Wyman plant with a rated capacity of 72,000 kilowatts. Another, Williams station, ranks fourth in the company's hydro system with 13,000 kilowatts. Other Central Maine installations are the Shawmut and Weston developments. Also on this river are Madison owned by the Great Northern Paper Company, and the Madison development of Hollingsworth & Whitney which also operates the Winslow development. Others are Waterville of Lockwood and Augusta owned by Bates Manufacturing Company, textile manufacturers.

This river, largest single source of hydroelectricity for Central Maine Power, has four additional sites for future development.

Six of the seven stations on the Saco river are owned by Central Maine Power. The seventh is the property of Bates Manufacturing Company. One site is listed as having future possibilities and two stations could possibly be redeveloped. Largest plant is the Skelton, with a capacity of 16,800 kilowatts.

Ford W. Harris of the engineering department of Central Maine Power has prepared a power summary of the three rivers for use in this article. This summary as furnished to us by C. F. Treat, director of publicity, is shown on page 553.

NORTHERN STATES POWER COMPANY, through its Wisconsin subsidiary, owns five plants containing 19 generating units on the Chippewa river with a total rated capacity of 104,910 kilowatts. These plants were built over a period of years extending from 1907 until the final units were installed at Holcombe in 1950. The Wisconsin company owns the Chippewa reservoir located on the headwaters of the river, which has a capacity of 10 billion cubic feet of water. This is leased to the Chippewa and Flambeau Improvement Company, a subsidiary with three other reservoirs.

Northern States points out that its personnel takes care of flood control, navigation, and wild-life preservation along the Chippewa and its tributaries. All this is done effectively and efficiently without a single penny of cost to the taxpayers.

Duke Power Company is an important factor in the hydroelectric field with an installed capacity of approximately 500,000 kilowatts. This North Carolina utility prides itself in what it has accomplished in soil conservation, farming, and forestry.

This program is described as an enlargement and extension of its farm management operation of previous years. It includes extensive terracing and contouring, educational work in co-operation with the United States Soil Conservation Service and other agencies, and planting of seedlings on thousands of acres of land that has been otherwise unsuitable for crop cultivation. In extent the lands affected by this program include about 200,000 acres above water and about 50,000 acres in reservoir basins.

Barcelona—A Spanish Lesson For Investors

The Federal government for some time has been investing World Bank and other funds in public utility services of friendly foreign nations in the form of rehabilitation loans, etc. But the question of whether the private utility investor should consider foreign public utilities as compared with public utility industry securities in the United States is still a difficult one. The experience of investors in a Spanish utility now threatened with expropriation by the Franco régime, is an interesting case study along this line.

By HERBERT BRATTER*

Investors who are thinking of following Washington's advice and putting capital into public utility enterprises abroad might do well first to look into the experience of Spain's most prominent electric enterprise. The network of companies headed by the Barcelona Traction, Light & Power Company, Ltd., which accounts for about one-fifth of Spain's production of electric energy, started out in 1911 as a foreign investment in Spain. Today its properties are completely in the hands of Spanish private interests. Yet the foreign stockholders have so far received not one peseta of compensation.

Those shareholders and the present Spanish occupants of the properties continue to alternate arguments and remote control negotiations. The verbal battles reverberate in the press of Spain, Europe, Britain, and North America, and in courts of the various countries concerned. Although there is still hope of settlement, as of this writing, nothing has budged the Spaniards from their occupancy and operation of "Barcelona."

The event which occasioned this story was a court ruling in an obscure Spanish town named Reus that Barcelona was a bankrupt concern, because it had not been servicing its sterling bonds. The principal actor in the play is the fabulously wealthy Spaniard, Juan March. Aligned against him are private Canadian, British, and especially Belgian investors, led by Sofina in Brussels, the well-known Societe Financiere de Transports et d'Enterprises Industrielles. Other characters are the British Ambassador in Madrid, the Foreign Office, the Belgian and Canadian gov-

*For personal note, see "Pages with the Editors."

ernments, and the State Department, which appears to fear the deterrent effects of the treatment of Barcelona not only on the flow of private American capital to Spain, but as well to other countries.

RECENTLY the French financial newspaper, *Agence Economique et Financiere,* in an article on Spain reported:

> Spain is faced with a serious lack of capital with which to carry out its program of industrialization. . . . The efforts to further industrial expansion are directed, in the first place, towards an increase in the supply of electricity, but this aim will only be achieved with the help of foreign capital. Without such help the Spanish economy would be paralyzed within another five to ten years. Spain requires 35 billion pesetas [about $1 billion] to carry out current plans for the production of electricity—that is, to bring the output of electric power up to 13.8 billion kilowatt hours before 1955—and neither private persons nor the banks are in a position to make advances on this scale.

Spain has been getting some aid from the American government and apparently will get more; but the aggregate will fall far short of what is needed to put the Spanish economy and armed forces in a strong position. Under instructions from the Congress the Export-Import Bank of Washington, while regarding Spain as a poor credit risk, has so far loaned that country $62,500,000 of MSA money for various purposes, including power generation. And, against the objections of a dubious administration, the Congress has put Spain down for $125,000,000 of outright grants, the actual delivery of which awaits termination of the long-drawn-out negotiations for American military bases in Spain.

If Spain needs large amounts of private capital for electric power development, the foreign investor would appear to be the only source. Yet, in the entire history of international investment in public utilities, it is doubtful whether any case can be found to approach the remarkable experience of the Belgian, Canadian, Swiss, French, British, American, and other stockholders of the Barcelona Traction, Light & Power Company.

Barcelona's Historical Background

BARCELONA TRACTION, LIGHT & POWER COMPANY, LTD., a Canadian company, was formed in Toronto in 1911, its main purpose being to promote the construction and operation of installations to provide the city of Barcelona and the Catalan provinces with electric energy. The program was to develop the hydraulic resources offered by the Ebro river and its tributaries from the Pyrenees to the Mediterranean. For this purpose, the company formed Ebro Irrigation & Power Company, Ltd. (Ebro), also a Canadian company, which was authorized by the Spanish authorities to operate in Spain under the firm name of Riegos y Fuerza del Ebro (Riegos), and which acquired the franchises necessary for carrying out its vast program.

Of the voluminous literature which, along with personal observations in Europe, forms the basis of this article, readers interested in more detailed information might read the pamphlet put out by the company's Spanish

"creditors" and the shareholders' pamphlet of refutation.[1]

THIS program had been conceived by Dr. Pearson, an American, to whom Brazil and Mexico are also indebted for the hydroelectric installations built in these countries by Brazilian Traction, Light & Power Company, Ltd., and by the Mexican Light & Power Company, Ltd. As early as 1914, Dr. Pearson requested assistance from Sofina, but the war interrupted negotiations. Later Sofina co-operated closely in the realization of the program that had been undertaken by progressively lending its efficient specialized services and also by contributing to the financial reorganization of the company. In 1926 Messrs. D. N. Heineman and Henri Speciael, representing the Sofina group, became members of the board of directors.

[1] These are, respectively: "Los Acreedores de Barcelona Traction, Light & Power Company, Ltd., Frente a las Irregularidades de Esta Compania," Barcelona, September, 1951, available also in French translation; and "Memorandum on a Pamphlet by the 'Creditors' of Barcelona Traction, Light & Power Co., Ltd." Brussels, December, 1951.

Development of the Installations

THE installations were gradually increased up to 1936, when the Civil War in Spain broke out. Upon the termination of the Civil War in 1939, extension work was resumed in spite of the difficult conditions created by the second World War. Important new installations were started and new extension work was undertaken. The undertakings of this vast production and distribution system made possible the economic and industrial development of a whole region.

The company's power plants today constitute a complex system. The operation of the various types of installations has been co-ordinated rationally in order to ensure the best use of the available water power, consisting of the natural flow from melting snow and rain, and from the reserves stored in the reservoirs, and with reliance on thermic plants to supplement the hydroelectric production during periods of low-water level and drought. The electric energy is transmitted to Barcelona and other centers of consumption by a net of transmission lines.

BARCELONA'S GROWTH, 1915-1948

Year	*Installed Capacity (000 kws)*	*Production (000 kws)*	*Number of Customers*	*Connected Capacity of Customers (000 kws)*
1915	75.8	177,945	76,187	131.8
1920	152.3	253,985	157,071	220.0
1925	227.0	512,128	260,635	293.1
1930	289.2	743,516	355,593	377.9
1935	357.8	835,302	435,112	432.1
1941	337.6*	864,795	486,711	486.5
1946	355.5	1,070,261	533,958	531.8
1948 (Feb.)	422.0 [The undertakings were seized in Feb., 1948]			

*The year 1941 was the first with nearly normal conditions after the Civil War. Repairs on the installations damaged during the Civil War had not yet been finished, which explains the temporary decrease in capacity from 1935.

The district serviced by the company is an area of 26,428 square kilometers containing nearly 4,000,000 inhabitants.

The table on page 558 shows that between 1915 and 1935 the undertakings had increased fivefold in importance. After the Civil War progress was resumed. Production reached 1,156,699,737 kilowatt hours in 1947, showing an increase of nearly 40 per cent over 1935, despite the disruption for several years of the entire region. The table below shows the financial results of the undertakings. Despite a considerable increase in operating expenses after the Civil War, net profits improved. They increased further in 1947, although precise figures are not available because the undertakings were seized early in 1948.

FOLLOWING financial difficulties during and shortly after World War I a reorganization in 1924 reduced the fixed charges in sterling of the company by giving the holders of one of these sterling issues an option to convert their securities into preferred shares. This offer was accepted by the majority of the holders, among them Societe Internationale d'Energie Hydro-Electrique (SIDRO), a company of the Sofina group which held a considerable amount of these securities. After this reorganization the financial structure of Barcelona Traction in 1925 was as follows:

Bonds		
Prior Lien A Bonds (Amortized in June, 1926)	£ 997,765	
Consolidated 6½% Prior Lien Bonds	2,800,000	
5½% First Mortgage Bonds .	2,147,500	
	£ 5,945,265	
Peseta Bonds . Pesetas	30,202,000	
Shares		
Preferred Shares of $100	$23,248,900	
Ordinary Shares of $50*	13,725,000	$36,973,900

*The par value of the ordinary shares, originally $100, was reduced to $50.

Financial equilibrium having been achieved in 1925, for the first time since its formation the company could distribute a dividend. At that time, the returns from the subsidiary companies operating in Spain were sufficient to cover the service on the loans received from Barcelona Traction, and the latter could therefore meet its own financial fixed charges and start to pay a dividend to its shareholders, who had not received a cent since the formation of the company. Starting in 1927,

BARCELONA'S FINANCIAL RESULTS, 1915-1946

Year	*Gross Receipts*	*Operating Expenses*	*Net Operating Profits*
	(Millions of Pesetas)		
1915	16.8	6.6	9.1
1920	27.9	9.4	18.5
1925	81.4	25.5	55.8
1930	107.3	37.0	70.3
1935	122.3	43.9	78.4
1941	139.2	64.3	74.8
1946	208.3	123.8	84.5

the ordinary shares also received dividends. In 1930 the preferred shares were retired and a new issue of 1,798,854 shares of common stock replaced the old preferred and common stock. In 1931, a dividend of 50 cents per share was paid to the holders of this new common stock. During 1931 to 1936 dividends could be paid only irregularly.

In 1936, the capital structure of Barcelona Traction was as follows:

Bonds		
Consolidated 6½% prior lien bonds	£ 2,684,900	
5½% first mortgage bonds	1,562,920	£ 4,247,820
Peseta bonds . Pesetas	61,895,500	
Shares		
Ordinary shares without par value carried in the books at		$39,555,900

At the outbreak of the Civil War in 1936, committees of workmen seized the assets and the power plants of the companies of the Barcelona group and the managers left Spain. Deprived of all sources of income, Barcelona Traction was forced to suspend the service of its bonds.

As soon as the plants were liberated the managers returned to Spain. Although operating expenses increased considerably during the following years, the earnings of the companies operating in Spain continued to provide Barcelona Traction with a peseta income more than sufficient to cover the service of its bonds. However, the company could not resume servicing its sterling bonds because the Spanish authorities would not grant the necessary authorization for transfers. The company resumed the service of its peseta bonds, with the authorization of the trustees of the prior lien sterling bonds.

Sofina, which continuously aided in the development as well as operation of the enterprises, has not received since June 30, 1939, remuneration for its services or foreign currency advances to Barcelona for administrative expenses, etc.

The 1945 Plan of Compromise

In an effort to remedy the situation resulting from the suspension of the service of its sterling debt, the company in 1944 approached a committee of bondholders that had been formed in London. A so-called Plan of Compromise resulted, which in October, 1945, was approved by a very large majority and later ratified by the supreme court of Ontario. But the plan could not be carried out because the Spanish authorities refused to grant the required permit, although no foreign exchange whatever was asked from Spain, but only permission to transfer pesetas from "Ebro" to the account of "Barcelona" within Spain. The plan therefore lapsed on December 14, 1946.

Juan March As Barcelona's Main Creditor

In 1940, Juan March had sought unsuccessfully to obtain control of Barcelona Traction by making what the company considered a trivial offer for the outstanding sterling bonds, while at the same time he described Barcelona's shares as practically worthless. Now, after the failure of the Plan of Compromise in 1946, he made a new and better offer for the sterling bonds. This offer, very close

Barcelona Investment—A Case Study

"INVESTORS who are thinking of following Washington's advice and putting capital into public utility enterprises abroad might do well first to look into the experience of Spain's most prominent electric enterprise. The network of companies headed by the Barcelona Traction, Light & Power Company, Ltd., which accounts for about one-fifth of Spain's production of electric energy, started out in 1911 as a foreign investment in Spain. Today its properties are completely in the hands of Spanish private interests. Yet the foreign stockholders have so far received not one peseta of compensation."

to that of the Plan of Compromise, was accepted by many bondholders. Thus, by using sterling already at his disposal, March became Barcelona's chief creditor. It was not foreseen what use Sr. March would make of his new position.

As the holder of more than £1,900,000 of Barcelona's bonds, March first sought to get control of the company in Canada. Disappointed there, he opened direct negotiations with company representatives in Barcelona in November, 1947, with the stated objective of obtaining immediate working control of the operating companies. The negotiations were adjourned, and during the adjournment the bankruptcy action occurred.

Barcelona Declared Bankrupt

WHAT Sr. March could not get by direct negotiation he got through a most remarkable Spanish court proceeding. In February, 1948, five Spaniards were equipped with a total of £11,660 of Barcelona first mortgage sterling bonds. A few days later three of the five brought proceedings in the small town called Reus to have the company declared bankrupt. The length and complexity of the petition were such—the company states—that its preparation must have commenced long before the petitioners acquired the bonds. No advance notice of the proceedings was given the company. In a subsequent court explanation as to why Reus had been chosen, the petitioners' advocate said:

> . . . Had I done so at Barcelona, the company's agents would have become aware of it as soon as I presented the petition and I should not have been able to carry out the whole of my plan; whereas at Reus nobody became aware of it and nothing was known

until all was prepared and the act of seizure carried out.

Rumor has it that the judge at Reus was no stranger to March.

After hearing the evidence presented by a single witness the Reus judge after two days, and at a time when Barcelona's bonds were being quoted at 108 on the Spanish stock exchange, declared the company "bankrupt" and named Sr. March's nominees, who were at hand in the court, to serve as representatives of the bankrupt estate, one with the title of *depositario* and the other as *comisario*. The former is a sort of receiver. Since Barcelona is a Canadian company with no place of business in Spain and since the stock certificates of its subsidiaries were also located abroad, the Reus decree authorized the *depositario* to take an entirely novel form of imaginary possession of all the shares of the subsidiaries, Ebro and Barcelonesa.

THE decree also authorized the seizure of all physical property in Spain of Ebro, a Canadian company, and Barcelonesa, although neither had been declared bankrupt; and authorized the dismissal of their officers and servants. The decree ordered that no notice thereof be given Barcelona Traction on the amazing grounds that its address was unknown! Subsequently Barcelona Traction was prevented from obtaining a hearing on the merits and legality of the bankruptcy. Within a few days, the Spaniards fired Ebro's and Barcelonesa's chief administrative officers and repudiated the whole board of directors of the Canadian concern, who had been duly elected under Canadian law. Other Spanish subsidiaries of Barcelonesa and Ebro were next seized in like manner. Thus within three weeks Sr. March was in full control of all of Barcelona's Spanish properties.

Barcelona, being Canadian and with no place of business or duly empowered representative in Spain, was unable to appear immediately in the Spanish courts. But when the seized subsidiaries of Barcelona with business offices in Spain besought the court to set aside the seizure of their properties, their applications were rejected on the ground that they had not been declared bankrupt and hence had no right to be heard, even though it was their properties that had been seized. Subsequent developments were based on equally strange legal reasoning. Ebro's receiver in imaginary possession of its common stock shares, which were physically located in Canada, and purporting to constitute in his own person a general meeting of Ebro, appointed his own board of directors and "withdrew" the authority of the lawyers which the real Ebro board had engaged to fight the bankruptcy decision of the Reus judge.

Amidst these happenings protests were lodged by the Canadian, British, and Belgian governments.[2] These the Spanish government was disposed to meet in part by appointing a special judge in place of the Reus judge. Meanwhile, however, March's lawyers took certain legal steps which tied the hands of the special judge, who took jurisdiction only two months after the

[2] Starting in 1949 these protests were supported by the American Embassy in Madrid. The U. S. urged on Spain an equitable settlement of the Barcelona Case on the principle of fair treatment for foreign investors.

bankruptcy declaration. British and Canadian courts were critical but helpless.

Bogus Shares Issued

AFTER more involved legal maneuvering in Spain a meeting of creditors, including the Spanish holders of Barcelona's sterling bonds, was called. Three nominees of Sr. March were appointed by the meeting as *sindicos,* to whom the properties were handed over. In December, 1949, the *sindicos,* basing their act upon the imaginary possession of all the shares of Ebro, passed resolutions to the effect that the stockholders voted to be governed solely by Spanish, rather than Canadian law. Ebro's pseudo board of directors arrogated to themselves the power to issue a new set of share certificates representing the whole of Ebro's capital. The same process was followed with respect to the Catalonian Land Company, another Canadian concern. Under Canadian law these duplicate shares are simply bogus.

In like manner, Barcelona Traction's Spain-domiciled subsidiaries issued new shares, duplicating those located abroad. Ebro's Spanish pseudo board also granted the *sindicos'* claim to Ebro's general mortgage and income bonds held by the trustee in Canada. All legal efforts in Spain by Ebro's true owners were kept blocked. This was the situation early in 1950, when, following renewed diplomatic protests, a Commission of Experts consisting of a Canadian, a British, and two Spanish accountants was created to determine whether Barcelona was a net creditor or debtor to the Spanish economy as a result of its operations since 1911. The Spanish members dissenting, the Canadian and British members of the commission found Barcelona to be a creditor of the Spanish economy to the extent of at least £19,695,522, adding that that figure did not reflect the real worth of the investment in Spain, having regard to the inflation of prices since 1911. That is, the replacement value of Barcelona's Spanish properties is materially above the experts' figures. (The company puts the amount at more than £55,000,000.) The allegation that the company was a debtor to the Spanish economy is an important feature of the Spanish justification for the seizure of Barcelona, as we shall see below.

SUBSEQUENTLY, in the summer of 1951, duplicate shares of stock for all Barcelona's subsidiaries operating in Spain and, it is believed, duplicates of Ebro's held in Canada were issued

❡

¶ "IF *Spain needs large amounts of private capital for electric power development, the foreign investor would appear to be the only source. Yet, in the entire history of international investment in public utilities, it is doubtful whether any case can be found to approach the remarkable experience of the Belgian, Canadian, Swiss, French, British, American, and other stockholders of the Barcelona Traction, Light & Power Company.*"

in Spain. All efforts of the foreign investors to establish in Spanish courts the invalidity of the duplicate shares and bonds have consistently been rebuffed. Without regard to the provisions of even Spanish law, the company reports, the stage was set for the public sale in Spain of the bogus securities. Commenting on this a company pamphlet states:

> The sale is thus one of which the practical result if it is carried to completion will be that Juan March will acquire securities—bogus it is true, but which unless the attitude of the Spanish courts changes will be treated in Spain as entitling him to the whole of the enterprise of the group at a price equivalent to what he had paid for the bonds which he has already acquired (*i.e.*, much less than their face value and arrears of interest), the face value and arrears of interest of the minority of bonds which he had not yet acquired, and the sum of 10,000,000 pesetas. Then, as he has boasted, the lawyers can fight for years about the bankruptcy; he will be no longer interested in whether it is valid or not.

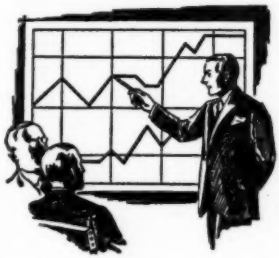
Thus far the account has been drawn from documents prepared by the company's foreign investors. What have the Spaniards to say in justification?

The Spanish Case

Reference was made above to the Commission of Experts, whose two Spanish members disagreed with their Canadian and British colleagues as to the net creditor-debtor position of the Barcelona Company to the Spanish economy. The report of the Commission of Experts gave rise to a joint statement issued by the Spanish Minister of Industry and Commerce and the British Ambassador in Madrid, a statement damaging to the company's position in the public eye, especially in Spain.

A statement was issued June 11, 1951, by the Spanish Minister of Industry and Commerce and the British Ambassador speaking for the British and Canadian governments. This statement gave it as the unanimous finding of the above-mentioned Commission of Experts that Barcelona's main Spanish subsidiary had failed to supply the Spanish government with requested information and stated that therefore the British and Canadian governments considered the Spanish government as justified in refusing the transfers of foreign currencies that had been requested; moreover, that the Spanish government was fully justified in withholding foreign currency from "this group of companies." The statement implied official British and Canadian acceptance of the Spanish government's finding that the group of companies had committed manifold irregularities with respect to the Spanish law and economy.

In his statement to the cabinet the Minister of Industry and Commerce, Juan Antonio Suances, alluded to the Plan of Compromise and the request for sterling "to cancel definitely some debts which, it was said, companies of the Barcelona Traction group operating in Spain had contracted abroad." The experts, Sr. Suances added, had discovered conspicuous irregularities. A long bill of particulars on these charges is embodied in the pamphlet issued in the name of the bondholders; that is, the Spaniards presently occupying the properties. With one exception, these charges of



Nationalistic Bias—A Foreign Credit Risk

"STARTING before World War I the history of Barcelona Traction reveals many of the problems which private capital faces when it enters an underdeveloped country and seeks to build up a utility from scratch. Repeated difficulties in meeting the company's obligations to foreign bondholders reflected in large part the disturbances of wars: first the World War of 1914-18; then the Spanish Civil War of 1936-39. Thereafter another hazard developed, the now quite familiar attitude in less-developed countries of hostility to foreign ownership of conspicuous business enterprises."

irregularities are vigorously denied by Barcelona's board of directors.

THE creditors' pamphlet, having been prepared after the Reus proceedings, reflects the fact that the new occupants of the Barcelona properties had access to all the correspondence files and books of the group of companies so far as these had been kept in Spain. The pamphlet purportedly quotes from those records. On the basis of the quotations, the reader must conclude that something irregular was going on. (But the company, it should be emphasized, has a detailed answer to the creditors' exposition.) The creditors make the following main points:

(1) Barcelona consistently failed to supply the Spanish authorities with information requested repeatedly since 1931 concerning the origin and nature of the "alleged financial obligations" forming the basis of Barcelona's request for Spanish permission to remit funds abroad. The claim that the managers of the company had been denied the right to be heard and to answer the charges made against the company was doubtful and those directors who had been in Barcelona at the time had fled abroad to avoid explaining the irregularities.

(2) Twelve instances of irregularities are given. From the charges we cull such terms as "fictitious debts," "imaginary invoices," "nonexistent operations," "improperly charging," "fictitiously overvalued," etc. The pamphlet paints a picture of the juggling of accounts on the books of a tangled pyramid of companies.

(3) Barcelona Traction finds itself insolvent not for the first time. On five occasions it has failed, imposing

various arrangements which have occasioned loss to its bondholders while yielding to its promoters a benefit of £2,983,130.

(4) The experts and the three interested governments have had at this disposition the complete company files in Spain, where such files ought to be kept. The files in Toronto are admitted to be incomplete.

(5) Barcelona's clandestine exportation of funds from Spain, for half of which it claims justification on the grounds that the transactions occurred during World War II at the request of the British Embassy, actually started prior to 1940 and continued right up to February, 1948, the date of the bankruptcy decree.

(6) Barcelona has withdrawn from Spain more capital than it invested there, the total withdrawn being more than £5,000,000 greater than the investment. The £5,000,000 covers only the period to exchange control in Spain. Subsequently through 1947 the company drew another £4,500,000 from the Spanish economy, funds moreover which could not legally be withdrawn from Spain.

THE charges which are condensed above are followed in the pamphlet by a long recitation of "proven irregularities" in the "intentionally complicated" corporate setup of the Barcelona group of companies; and in the group's relations with its bondholders, who suffered injury to the benefit of the promoters.

On the one charge which the company admits, the illegal transfer of funds from Spain in 1940 and 1946, the company has publicly stated that "the first of these transfers and approximately half of the [£367,295] total were carried out in conjunction with and at the express request of H. M. government itself." The amount of these transactions, the company maintains, was only a fourth of that given in the creditors' pamphlet. So far as concerns the pesetas the company turned over to the British Embassy without Spanish permission, this was done for patriotic reasons to help the allied cause. A company spokesman furthermore cites Jesse Jones' book, *Fifty Billion Dollars,* as proof that others—*e.g.*, the U. S. government and American motion picture companies—engaged in the same wartime practice in Spain. The company does not deny that between 1940 and 1946 it engaged in illegal exchange transactions. It insists, however, that those transactions were initiated by the British government and that approximately half of the total were conducted in collaboration with that government.

Conclusions

STARTING before World War I the history of Barcelona Traction reveals many of the problems which private capital faces when it enters an underdeveloped country and seeks to build up a utility from scratch. Repeated difficulties in meeting the company's obligations to foreign bondholders reflected in large part the disturbances of wars: first the World War of 1914-18; then the Spanish Civil War of 1936-39. Thereafter another hazard developed, the now quite familiar attitude in less-developed countries of hostility to foreign ownership of conspicuous business enterprises.

The trend toward nationalism, of which this attitude is a part, has been characteristic of the Spanish scene since the 1930's. That private Spanish interests have been able to do what

they have done in Barcelona's case is attributable, moreover, to the fact that in most underdeveloped countries and especially in a dictatorship, however benign, those close to the seat of power have the inside track in any rivalry with foreign-owned enterprises. Many examples over the years can be given by foreigners who have done business in such places as China, the Middle East, and Latin America. Under the Marshall Plan the U. S. government initiated a system of guaranteeing American foreign investments against foreign expropriation. But it is clear that even such a guaranty would not protect an investor against the sort of expropriation invented by the authors at Reus.

What happened at Reus could never have been foreseen when the undertaking was launched in 1911. A utility investment abroad is a long-term project which faces unpredictable hazards in addition to the normal business risks.

WAS there any justification for the Spanish court awarding the properties of Barcelona to private Spanish interests? The Spaniards claim that the company's inability to get foreign exchange to service its sterling debt was due to the fact that the company had violated Spain's exchange control laws. They present an elaborate and intricate case against the company. But, in view of the disagreement between the Spanish and foreign experts of the international committee which was formed to study the matter, the only charge which appears proven, and this to a smaller extent than claimed, is that of certain irregular remittances involving violation of the exchange control law. Such violations would not by any stretch of the imagination justify ejection of the foreign owners such as occurred. For what happened in the bankruptcy seems to have had no basis even in Spanish law. Exchange control is today quite common abroad, almost universal. If foreign investors are to risk losing their entire holdings through a violation of the exchange control laws, whether deliberate or accidental, the already large hazards of investment will become prohibitive.

The Spanish justification of their action on the additional grounds that the company already had recovered its investment and become a net debtor to the Spanish economy, quite apart from the fact that this claim was denied by the Canadian and British experts, introduces another novel deterrent to international investment. This Spanish argument strikes the impartial foreign observer as more ingenious than convincing. It has nothing to do with the bankruptcy case and, even if true,

¶ "JUST *what rôle the Madrid government may be playing in the settlement of the Barcelona Case we do not know. In Madrid and Washington the writer was unsuccessful in obtaining from Spanish government officials any statement for quotation. The officials' attitude was simply that the differences are between two private groups and do not directly concern the Spanish government.*"

would not justify expropriation by any stretch of the imagination.

To get to the bottom of the cloud of charges of misdoing levied at the company in the Spanish creditors' pamphlet and the detailed denials issued by the stockholders through Sidro in reply thereto is beyond the capacity of this writer. Suffice it to note that a reading of the Sidro reply is enough to jeopardize seriously the effectiveness of the Spanish document on the outside reader of both. One cannot but muse on the substantial costs which this contest between the foreign and the private Spanish interests must have involved in time and money.

What could the foreign owners of Barcelona have done to avoid the events of 1948 and since? Obviously, it could have capitulated to Sr. March in 1940, accepted his "derisory" offer, and called it quits. No one but Sr. March would have recommended that course. Perhaps the company should have recognized the handwriting on the wall and sought an arrangement with its powerful Spanish opponent on the basis of some counteroffer. The International Telephone & Telegraph Company encountered signs of Spanish hostility even before the Civil War and eventually, in 1945, agreed to sell out—in this case, to the Spanish government—on satisfactory terms. Discretion was the better part of valor.

The London *Times* in August saw "slight but welcome signs that the long struggle of the Barcelona Traction Company against the extraordinary toils in which it has been enmeshed in Spain may be entering a rather more hopeful phase." Perhaps this means that negotiations between the foreign stockholders and the Spanish bondholders who are now occupying the properties in Spain are under way and show promise. If "possession is nine-tenths of the law," the foreign stockholders in such negotiations must be under great handicaps.

Just what rôle the Madrid government may be playing in the settlement of the Barcelona Case we do not know. In Madrid and Washington the writer was unsuccessful in obtaining from Spanish government officials any statement for quotation. The officials' attitude was simply that the differences are between two private groups and do not directly concern the Spanish government. But it can hardly be that the protests and remonstrances lodged with Madrid by the British, Belgian, Canadian, and American governments have had no effect at all. If Spain really wants private foreign capital for its economic development, the sooner the Barcelona business is equitably settled, the sooner Franco's government can begin the slow process of living down the events described in this article.

The Barcelona Case is only one extreme example, but as an object lesson in a discouraging method of treating private capital, the results are of interest. We also know that given the right kind of "climate" private capital can and does supply progressive services to meet expanding needs, as the record of achievement set by Brazilian Traction interests indicates.

Washington and the Utilities

Tidelands Bill Repercussions

ALTHOUGH it has long been understood throughout the electric industry that the administration's tidelands bill extends to inland waters and lakes as well as offshore submerged lands, it took a sarcastic letter from Senator Murray (Democrat, Montana) to emphasize an important hydroelectric feature of the legislation. Already passed by the House (285 to 108), the bill is now being debated in the Senate and may even have passed by the time these lines appear in print.

Most people think of the tidelands bill as of primary concern to the oil and gas production industries which have been caught between rival Federal and state claims to offshore coastal deposits. That is, of course, the main and controversial background for the much-debated bill to get around the U. S. Supreme Court decision favoring paramount Federal rights.

But the fact that the bill also would give the states unquestioned authority over beds of navigable streams inland, caught the suspicious eye of the public power bloc in Congress. Senator Murray's letter, addressed to Interior Secretary McKay, called attention to a provision which is intended to give the states unquestioned title to the beds of navigable streams and other inland waters. Murray said the apparently "harmless words" would "strip the United States of its right to use the beds of navigable streams as sites for dams."

He referred specifically to a provision which says the Federal government's right under the Constitution's commerce clause shall not include the "use" of navigable river beds. But Murray observed that another section of the bill provides that nothing in the bill is to interfere with the development of such lands and waters for flood control, navigation, and power production. Murray went on to ask whether government engineers had designed some new kind of a dam which would not rest upon a river bed.

FEW proponents of the bill took Murray's criticism very seriously. They pointed to a section which very definitely states that the Federal government's authority to build and operate dams on its own property should not be affected by the tidelands legislation. The text of this provision is as follows:

> Nothing in this act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power at any site where the United States now owns or may hereafter acquire the water power or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation or to provide for flood control or the production of power at any site where the United States now owns the water power.

If there are any serious inconsistencies in the two sections cited by Senator Murray, it was generally assumed that clarifying language would adjust the difficulty. But the discussion serves to stress the broad nature of the bill and the effort being made by the administration to draw a tight line upon further encroachment by the Federal govern-

ment on the rights of states with respect to inland waters and land beneath those waters, Great Lakes, and so forth.

The tidelands issue—so called—has long suffered from a lack of popular understanding. This gives rise to a vague impression that it involves some kinds of particular advantages being sought by such states as California and Texas in the rich offshore gas and oil deposits.

But there is no such limit to the possible implications of the Supreme Court ruling setting up the "paramount" authority of the Federal government. Some lawyers think the Federal government, under extreme interpretations, might even start issuing licenses for offshore structures, such as the Steel Pier in Atlantic City and beach facilities on the Great Lakes.

Whatever is necessary to make the return of title stick will probably be done before the bill goes to the White House for President Eisenhower's signature. But Senator Murray's jibe about the bottomless dams points up the extensive interest which the electric industry, as well as the gas and oil industries, should have in the form in which this bill finally is enacted.

Ike's Power Policy

THERE is a definite promise from Interior Secretary McKay that the Eisenhower administration will unveil its national power policy on critical test points in the near future. McKay told members of the Interior Subcommittee of the House Appropriations Committee he will soon make three controversial decisions "upon which this administration will stand or fall on the idea of power."

The decisions involve the surtax charged by private utilities in the Pacific Northwest, the Georgia Power Company-Southeastern Power Administration Case, and the controversial Hell's Canyon project on the Snake river in Idaho. "Those things are so fundamental to the whole power issue of this country," said McKay, "that when I make those decisions I am going to have Cabinet approval to discuss them."

Secretary McKay has called the power preference clause "just" because public funds built the transmission lines. This is in connection with the Northwest power situation, but, he added, "the end results have not been fair." As proof, he pointed out that customers of privately owned power companies pay a 20 per cent surtax at the time of the year when power bills are the highest. "That just is not fair to the customers," McKay said. "Likewise, our policy should not be to try to freeze out the privately owned power companies," he continued.

He went on to say "the privately owned power companies cannot expect anything out of me but a fair shake, and the good ones will not ask any more."

INTERIOR Secretary McKay acknowledged the right of any people in any state to own their own power distribution systems if they choose to do so, but said the Interior Department "should not be trying to force them to do it." He reiterated his stand taken previously that 5-year contracts between private utilities and Bonneville Power Administration are not long enough. He said he does not believe in either private or government monopolies.

A more explicit water and power policy for the United States is needed in McKay's opinion. "It seems to me," he said, "that the time has come when Congress should write a water policy . . . and a power policy, in more detail." He predicted such a move, but said it was a congressional responsibility.

Incidentally, public power policy in another field is expected to be clarified in the next few weeks, according to Representative Hinshaw (Republican, California). Hinshaw revealed that the Atomic Energy Commission will soon make public its long-awaited proposals for letting private industry develop atomic electricity plants.

Representative Hinshaw pointed out that "industry has been asking for such a statement of policy for two years," and "Congress has been waiting for six years." He said slow atomic development for power use "on all fronts" is an indi-

cation that "Socialism does not work in America."

A Plea for Gas Unity

TEXAS natural gas producers were warned last month by a natural gas industry leader that the establishment of minimum field prices and what he said amounted to "state export taxes" on this premium fuel would react in the long run to the detriment of the producer.

C. P. Rather, president of the Independent Natural Gas Association of America, told the annual convention of the Texas Independent Producers and Royalty Owners Association, that incentives for expanding production are imperative if all segments of the natural gas industry are to keep up with the expanding natural gas market and insure consumers the adequate service to which they are entitled.

The establishment of minimum field prices for natural gas would be a long step toward bringing this part of the industry under government regulation, he said. Competitive bidding for natural gas supplies, he declared, has demonstrated that it is the surest method of raising the field price of this natural resource and thereby offering adequate incentive for development and exploration.

He told the Texas members that, while the natural gas industry is made up of distinct segments, it is essentially one industry. The various segments must work together for the good of the whole, he said, with due consideration for the public "who, in the final analysis, is the source of our income and who can make or break us if we do not render a service which it appreciates and values."

To this end, Mr. Rather announced that INGAA has embarked on a public service program aimed at telling the natural gas industry's story and explaining its problems to the public. He stressed that producers and royalty owners, as a part of the industry, have as much at stake in getting this story before the general public as the pipeline companies and distributors.

"There is an interesting story to be told," Mr. Rather said. "Those of us who have given thought to it feel that if it is well and honestly told, with the objective of letting the public determine where its best interests lie, that the result will be good, both for the industry and the public."

MR. RATHER said it is a misconception on the part of producers and royalty owners that applications for rate increases filed by pipeline companies with the Federal Power Commission are largely to pay for increased transmission costs.

Of the rate increase applications filed with FPC between January, 1950, and August, 1952, approximately 60 per cent of the $200,000,000 annual rate increase requested "represented reimbursement of higher gas costs to the companies," he said. While this percentage contains some duplications, he said it is nevertheless "somewhat indicative of the extent to which the field price of gas has necessitated the rate increases applied for."

Mr. Rather stressed that the pipeline companies realize production and exploration costs are rising and that they must pay higher prices for new reserves and supplies. But regulation, he said, will stifle the incentive for expanding production. On the other hand, competitive bidding for supplies will provide the necessary incentive and react to the advantage both of producers and consumers, he declared.

If natural gas producers are classed as a public utility and brought under Federal regulation—a danger which Mr. Rather said is very real—it could only result in making less gas available to the public, he said. This is not consistent with public interest, he added.

"Let the public understand that, let it understand some of the hazards of the producing business, and let it see how it is different from a public utility," he urged the group. "Let it understand the highly competitive aspects of the business. Let it realize the importance of continuing to find new reserves and I believe it will agree with us."

Exchange Calls And Gossip

Nelsen Named REA Chief

MINNESOTA'S Lieutenant Governor Ancher Nelsen takes over his duties as chief of the Rural Electrification Administration with prospects of a larger appropriation for the rural telephone program in 1954, although not so large as that requested in the Truman budget for the coming fiscal year. The revised budget for the program, submitted to Congress by Secretary of Agriculture Benson, calls for $50,000,000 for the telephone program—an increase of $15,000,000 over 1953 appropriations, but a reduction of the same amount in funds requested by the Truman administration.

Benson told members of the House Subcommittee on Agriculture Appropriations that the extra $15,000,000 would "provide for a reasonable expansion of the program." He said the job of providing high-quality rural telephone service in rural areas "is a big and difficult job that we must approach with care and assurance that every loan is economically sound, adequately secured, and in the long run beneficial to the user." Benson defended the $15,000,000 reduction from the Truman budget on the grounds that "the most economical and efficient way of administering a rural telephone loan program is to provide a relatively stable authorization rather than to permit wide variations in the loan funds available from year to year."

Benson said he was "extremely pleased" at the nomination of Nelsen. Nelsen has been active in the Farm Bureau, helped organize the McLeod Cooperative Power Association at Glencoe, Minnesota, and is a director and vice president of that association. He has also been vice president of the Minnesota Electric Co-operative and a director of the local Farmers' Co-operative Elevator Association. He has served as president of his local Farmers' Mutual Insurance Company, and president of the Minnesota Association of Mutual Insurance Companies.

In commenting on the nomination, Benson said he thinks Nelsen's "abilities" will "help us improve the administration and effectiveness of the services that REA provides."

Illinois Court Modifies Rate Ruling

THE Illinois Supreme Court has modified its ruling of last January in the Illinois Bell Telephone Case. The new opinion of the court does not change its fundamental requirement that the Illinois Commerce Commission take into account current economic conditions and reproduction cost as factors to be considered in fixing rates.

But the state supreme court did delete that portion of its original finding which would have required the commission to make a specific finding on reproduction cost value.

The revised opinion simply states that the commission, "in failing to take into account current economic conditions, present price levels, and reproduction costs," had clearly erred in "relying on an interest-plus-dividend formula as an exclusive rate-making guide." Chairman George R. Perrine of the Illinois commission interpreted the court's action as meaning that the rate increase request should be reopened. But Illinois Bell put the $22,800,000 rate boost into effect at once after a mandate from the supreme

court arrived in the Kane County Circuit Court, where the case originated.

The Illinois attorney general's office, which represents the commerce commission, apparently was outmaneuvered by the telephone company, which put the higher rates into effect while the state's legal representatives were considering asking for an injunction to bar the increases.

Commission observers expressed doubt of the legality of the new rates because of the lack of commission approval of them as "just and reasonable," as the law requires. They hinted that the company might be subject to reparation suits if the new rates should later be ruled illegal.

FCC Rulings Bar Service Denials

THE Federal Communications Commission has handed down two far-reaching decisions involving provisions in the tariff schedules of telephone and telegraph companies on discontinuance of illegal service. By a 4-to-1 vote, the commission denied the American Telephone and Telegraph Company and one of its subsidiaries a petition for rehearing in the so-called Katz Case, originally filed in December, 1951. The case arose when a District of Columbia telephone subscriber, suspected by the police of using his telephone for gambling purposes, was deprived of service by the telephone company.

A Bell system tariff regulation permitted the discontinuance of service when requested by the local law-enforcement authorities.

The FCC suspended the tariff on grounds that, lacking evidence to show unlawful use, telephone companies had no right to avoid either their obligation to serve or any liabilities deriving from such service. The telephone companies immediately asked for a rehearing, pointing out that the ruling left them open to possible prosecution as an accessory if they failed to obey the police, as well as to possible damages if no evidence was forthcoming that the service was being used for illegal purposes. The telephone companies further contend that they should not be responsible for obtaining such evidence.

IN a parallel case involving the Western Union Telegraph Company, the FCC checked that company's plan to deny service to bookies and racing news publications. In a decision announced last month, the commission knocked out the company's proposal as "unjust, unreasonable, and discriminatory," because it would also be applicable to "certain persons who would use it for legitimate purposes."

The commission, in upholding the initial decision of a hearing examiner last August 7th, held that Western Union, as a licensed common carrier, is required to keep its services open to the general public for legitimate use. Western Union had proposed the limitation on customers in December, 1951, after it had suffered losses of equipment in numerous police raids on "bookie" establishments.

The FCC ordered the company to file revised tariff schedules (conditions of service) so as to "cancel and rescind" the provision in question and to "cease and desist" from employing and enforcing it. "The basic flaw in the proposed Western Union tariff regulation," the FCC said in announcing its decision, "is that it would deprive persons of leased wire service who are using or would use the facilities for lawful purposes."

"THE arbitrary and discriminatory nature of the proposed tariff regulation," the decision continued, "is highlighted by the fact that, while it would deny service to certain persons who would use it for legitimate purposes, it would also make eligible for service persons who have in the past used the service for illegal purposes." Moreover, concluded the ruling, persons who do not now have second-class mailing privileges could become eligible under the proposed tariff regulation "by the simple and inexpensive expedient of obtaining such mailing privileges."

Financial News and Comment

By OWEN ELY

Rate Regulation in New Jersey

Herbert J. Flagg, executive officer of the New Jersey Board of Public Utility Commissioners, recently presented a paper before the New York Society of Security Analysts in which he commented on (1) the regulatory setup in New Jersey, and (2) the economics of utility rate fixing.

Prior to the state supreme court decision in the Public Service bus fare case in 1950,[1] the principal evidence as to rate base submitted by the utilities related to prudent investment, Major Flagg stated. While the court decision stressed "fair value" and the utilities have since submitted considerable data on reproduction costs, he stated that "in no case has a utility been able to produce evidence as to cost of reproduction that was not, in the board's judgment, faulty and hence not worthy of weight in determining a rate base." Hence "fair value" is still based almost entirely on net original cost. He indicated that the court desired that the board "go behind the companies' books and get at realities," but apparently the board has not yet decided how to carry out such a program.

Regarding rate of return, the range allowed in some 48 applications for increased rates since January, 1946, has been between 2 per cent and 6.37 per cent. The high rate was that which the board found the New Jersey Bell Telephone Company would experience for 1951, when it denied the application for higher rates; in general, 5.6 per cent has been applied as a "fair return" in proceedings affecting New Jersey Bell since January, 1948. The board allowed 6 per cent in 12 of the 48 cases, 5-6 per cent in 20 cases, 4-5 per cent in 6 cases, and less than 4 per cent in 9 cases. However, in most cases where the return allowed was less than 6 per cent, "it represents all that was requested."

Are Utility Earnings Vulnerable?

Major Flagg, in the address referred to above, devoted the latter part of his talk to a discussion of the vulnerability of utility earnings during a severe depression. To promote earnings stability, he believes that utilities must study cost accounting in relation to rate fixing. Only thus can they project the future demand for the product, and the production cost. Rates should be "rational and realistic," so that (1) each class of customers will contribute adequate revenues

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[1] *Re* Public Service Co-ordinated Transport, 86 PUR NS 161; 5 NJ 196, 74 A2d 580.

in relation to the cost of serving that class; and (2) the rate structure for each class should be scientifically designed in relation to the variables in customer service, demand cost, and commodity cost.

As an indication of the extent to which utility management is bound by tradition, he pointed out that the $1 initial charge for service is an almost universal feature of residential rate schedules, although it started many years ago when customer costs were about one-third to one-half of what they are today. The municipal plant at Taunton, Massachusetts, has had the courage to raise the price for the first 20 kilowatt-hour residential use from $1 to $1.77—with no adverse public reaction.

As another example, Major Flagg doubts whether television, with its small load factor, pays its proper share of costs under present rate schedules. It is estimated that TV contributes $70,000,000 to $200,000,000 a year in utility revenues. The net diversified demand per set at the generator is estimated at about one-quarter of a kilowatt, and average annual use at about 250 kilowatt hours. The incremental kilowatt-hour rate is probably around 2-2½ cents so that the annual revenue per TV set may be estimated at $6.25 annual revenue, or about $25 for each kilowatt of capacity per annum. This figure compares with estimated average revenue from all residential usage of $80-$100 per kilowatt year, he points out. The major reason, of course, is that the annual load factor of the average TV set is probably not more than 12 per cent compared with a 35-40 per cent average for other residential uses.

MAJOR Flagg concludes that "striking changes both in investment responsibility and in class characteristics of use are taking place, which result in changes in the cost to serve, which changes are not being adequately recognized by contemporaneous changes in the rate structures and in the prices for the service. It is my belief that the time has come for utility management, in the interest of both customers and the industry, to meet these new conditions by establishing realistic load-factor type rates for residence service. In the alternative, a partial solution would be to increase the initial charge and the price for the first one or two blocks of the residential rate schedule so as to more adequately compensate for the sharply increased customer and demand costs."

Our own view is that many of our present residential schedules may have had their origins during earlier periods, particularly the 1930's, when utilities had considerable excess capacity to sell—whereas now plant must be steadily increased at heavy cost to take care of new demands. While there may still be advantages in stimulating over-all residential business, the stimulus should take into account any special cost factors involved, particularly load incidence as with TV sets, the heat pump, etc.; perhaps a special "demand charge" should be set up for such appliances.

Possibly it would be worth while for the industry to have EEI, Ebasco Services, or some other organization make a detailed study of each major household appliance with respect to (1) its percentage contribution to residential revenues, (2) its load factor and load incidence, (3) the present saturation rate, and (4) the probable future increase in saturation. This study might well include the heat pump, and it would therefore have to be done on a territorial basis. It might then be possible to make more accurate projections of (1) the average residential rate per kilowatt hour based on present schedules, (2) the over-all kilowatt-hour cost of residential service, and (3) inequalities in costs for different appliances. The industry could then determine to what extent the present promotional-type rate schedule for residential service is justified, and what should be done about it with respect to various major appliances such as TV and the heat pump.

TURNING to industrial power rates, Major Flagg made a more serious charge against the utility industry. He

contends that in the event of a recession, industrial power sales would be the first to feel any drastic effect and that while kilowatt-hour sales would go down, *the kilowatt demand might even go up.* (In other words, the load factor would drop.) The industrial rate structure includes the demand charge proportional to kilowatts of capacity required, and the energy charge proportional to kilowatt-hour or load factor — the proportion of the year that service is taken. If it happens that the demand rate is too low in relation to demonstrable demand costs

March Financing

PRINCIPAL PUBLIC OFFERINGS OF ELECTRIC AND GAS UTILITY SECURITIES

Date	Amount (Mill.)	Description	Price To Public	Underwriting Spread	Offering Yields	Moody Rating	Success Of Offering
		Mortgage Bonds					
3/5	$10.0	Indianapolis P. & L. 1st 3¼, 1983	102.31	.35C	3.50%	A	a
3/11	6.8	Fall River Elec. Lt. 1st & CT 3¼, 1983	102.27	.73C	3.63	A	b
3/12	10.0	Central Maine Power 1st 3⅜, 1983	101.00	.68C	3.57	A	b
3/12	10.0	Narragansett Electric 1st 3½s, 1983	101.87	.49C	3.40	Aa	a
3/19	2.0	Lake Superior District Pr. 1st 3¼, 1983	101.81	.66C	3.65	A	b
3/19	12.0	Mississippi P. & L. 1st 3⅛, 1983	100.46	.32C	3.60	A	b
3/26	9.0	Dallas P. & L. 1st 3½s, 1983	101.87	.59C	3.40	Aa	a
3/26	16.0	Georgia Power 1st 3⅜s, 1983	100.90	.68C	3.70	A	a
		Preferred Stocks					
3/5	$8.0	New England Power 4.60%	$100	1.87C	4.60%		—
3/19	3.0	Public Service of New Mexico 5%	100	2.50N	5.00		a
3/24	20.0	Pacific Lighting $4.75	100	2.50N	4.75		a
3/26	10.0	Georgia Power $4.92	102.50	2.48C	4.80		a
							Earnings-Price Ratio
		Common Stocks—Subscription Rights					
3/6	$1.7	Atlanta Gas Light	$ 20.50	.35N	5.85%	9.0%	
3/7	.9	Lake Superior District Power	31.00	1.14N	6.45	8.6	
3/10	.3	Colorado Central Power	17.50	*	6.40	7.8	
3/26	28.6	El Paso Natural Gas	32.50	#N	4.92	6.9	
3/26	2.8	Southern Indiana G. & E.	24.50	.30N	6.12	7.5	
3/31	3.9	Kentucky Utilities	18.50	.59N	5.40	8.5	
		Common Stocks—Direct Offerings					
3/11	$6.2	Arizona Public Service	16.50	.64N	5.45%	7.1	a
3/18	20.1	Public Service E. & G.	26.88	.74N	5.96	6.5	a

*Not underwritten. #Special underwriting arrangement. C—Competitive bidding. N—Negotiated underwriting. a—Reported well received. b—Reported that issue sold slowly.

TOTAL NEW MONEY OFFERINGS IN MARCH, 1953 (MILLIONS)

	Sold to Public	Offered to Stockholders	Sold Privately	Totals
Electric Utilities				
Bonds	$ 76.4		$26.2	$102.6
Preferred	12.9	$ 7.9	9.5	30.3
Common	25.5	7.7	—	33.2
	$114.8	$15.6	$35.7	$166.1
Gas Utilities				
Bonds			$16.5	$ 16.5
Preferred	$ 19.5			19.5
Common		$29.7		29.7
	$19.5	$29.7	$16.5	$ 65.7
Total Electric and Gas	$134.3	$45.3	$52.2	$231.8

Source of data—Irving Trust Company.

and the energy rate too high in relation to commodity costs, nevertheless the combination of the two charges may produce a satisfactory current contribution to the utilities' operating income. But during a recession, the insufficient revenue from the underpriced demand part of the rate would remain the same, while the more-than-sufficient revenue from the overpriced commodity portion of the rate might be cut down by a third or more. Thus the *operating income* from industrial sales would be reduced more, proportionately, than would industrial revenues.

He concludes that "since in these days this class of service makes a relatively large contribution to utility operating income, it follows that any material decrease in such contribution will have a serious effect when carried down to net income."

THE utility industry's reputation for being "depression-proof" was acquired in the 1929-32 depression, Major Flagg states. But in 1930 operating income was obtained about 65 per cent from stable sales and 35 per cent from vulnerable sales, it has been estimated. At the deepest part of the depression about half the operating income from vulnerable sales had been lost, but, nevertheless, the return on the investment was only reduced from about 8 per cent to 7 per cent during the period 1930-34.

But today, he points out, the percentages are reversed and some 65 per cent of operating income is derived from vulnerable sales. Hence, if only 40 per cent of operating income from vulnerable sales should be lost during a recession, the rate of return on the investment would drop from its present level of 6 per cent to 3.7 per cent.

It is difficult to analyze these conclusions, which were based on studies prepared by a consulting expert, W. S. Leffler. In the first place they assume that the various major divisions of electric sales contribute equally to net operating income. This seems rather dubious unless it can be supported by considerable statistical evidence; in fact it has often been assumed by analysts that the residential business is more profitable than the industrial—though probably not to the same extent as in earlier years. Of course, varying load factors, and the incidence of both daily and seasonal peak loads, are part of the problem; but disregarding this factor, industrial rates still seem lower than residential in relation to costs, despite the fact that the average residential kilowatt-hour rate declined sharply in the period 1941-51 while the industrial remained stationary at one cent.

NEARLY half of the over-all cost of service represents the cost of capital, which should be evenly allocated per kilowatt hour of load factors are ignored. Of the remaining half of the revenue dollar, 29 cents represents the cost of producing power and 16 cents goes for maintenance and depreciation, both of which items should also be allocated on an even kilowatt-hour basis to residential and industrial consumers if it were not for the varying load factors mentioned above. This leaves the cost factors of transmission, distribution, accounting and collection, sales promotion, and administrative and general expense, all of which should be heavily weighted against the residential service (since there are a far greater number of residential customers compared with industrial). Even with due allowance for the difference in transmission and overhead costs, it seems difficult to account for the variation in residential and industrial rates, on the assumption that both services pay their fair share of over-all costs.

Moreover, no explanation is given for the assumption that the proportions of stable and vulnerable income have reversed since 1930-34. The proportions of revenues for all electric utilities have not varied a great deal, as shown in the following table:

	1933	*1951*
Residential and Rural Revenues	38%	41%
Commercial	27	26
Industrial	27	28
Miscellaneous	8	5
Total	100%	100%

If net operating income is really as vulnerable to recession conditions as claimed by Major Flagg, it is important to give the matter further study so as to protect investors. But the meager data presented in his address do not seem to make a convincing case for his conclusion.

THERE are at least two other factors which should serve to cushion the impact of a depression on electric util-

CURRENT ELECTRIC UTILITY STATISTICS AND RATIOS

	Unit	Latest Month	Latest 12 Mos.	Per Cent Increase Latest Month	Per Cent Increase Latest 12 Mos.
Operating Statistics (January)					
Output KWH—Total	Bill. KWH	36.7	401.4	7%	8%
Hydro-generated	"	9.3	—	D7	—
Steam-generated	"	27.4	—	13	—
Capacity	Mill. KW	82.4	—	8	8
Peak Load (November)	"	70.2	—	6	—
Fuel Use: Coal	Mill. Tons	10.5	—	6	—
Gas	Mill. MCF	60.1	—	15	—
Oil	Mill. Bbls.	7.7	—	27	—
Coal Stocks	Mill. Tons	40.3	—	7	—
Customers, Sales, Revenues, and Plant (December)					
KWH Sales—Residential	Bill. KWH	6.1	64	12	13
Commercial	"	4.2	49	9	10
Industrial	"	12.6	141	10	4
Total, Incl. Misc.	"	29.9	333	8	6
Customers—Residential	Mill.	31.1	—	4	4
Commercial	"	4.4	—	2	2
Industrial	"	.5	—	3	3
Total	"	38.3	—	3	3
Income Account—Summary (December)					
Revenues—Residential	Bill. $	170	1,819	11	11
Commercial	"	115	1,315	8	9
Industrial	"	141	1,573	11	6
Total, Incl. Misc. Sales	"	465	5,176	10	8
Sales to Other Utilities	"	37	417	9	6
Misc. Income	"	32	214	14	2
Expenditures—Fuel	"	88	913	15	7
Labor	"	94	1,075	9	6
Misc. Expenses	"	85	853	16	9
Depreciation	"	43	506	8	7
Taxes	"	96	1,217	2	7
Interest	"	27	312	11	11
Amortization, etc.	"	2	9	D53	D67
Net Income	"	99	922	14	13
Pref. Div. (Est.)	"	11	129	11	8
Bal. for Common Stock (Est.)	"	88	793	13	16
Com. Div. (Est.)	"	51	581	9	9
Bal. to Sur. (Est.)	"	37	212	37	104
Electric Utility Plant (December)	"	22,831	—	10	—
Reserve for Depreciation and Amort.	"	4,545	—	9	—
Net Electric Utility Plant	"	18,286	—	10	—
Life Insurance Investments (January 1st-March 21st)					
Utility Bonds	"	—	159	—	15
Utility Stocks	"	—	25	—	31
Total	"	—	184	—	17
% of All Investments	"	—	8%	—	8

ity net earnings. One is the fact that many utilities are still using obsolete equipment, not merely once or twice a year in emergencies but a substantial part of the time.

Thus Duquesne Light Company is still running its Brunot Island plant quite substantially, in order to supply needed industrial power. Operating costs at this plant run as high as 13-14 cents per kilowatt hour and the power is probably sold for less than this figure. In the event of a depression, therefore, the company might actually save a little money by closing Brunot Island, and continuing to use the ultramodern Elrama plant at capacity—where costs are probably between 2-3 cents per kilowatt hour.

The remaining factor is the demand charge in many industrial contracts which would insure some income to the utility, for the time specified in the contract, even if the industrial company did not take any power.

The situation varies considerably with each utility, but in our opinion the electric utilities have been able to "hedge" rather heavily against depression conditions, with resulting protection for investors in their securities.

The Interest on Construction Credit

THE item "Interest on Construction Credit" has become increasingly important in the utility income account in the postwar period, as most utilities have adopted it as a method of reflecting or offsetting the interim cost of capital on the large amount of plant under construction.

As has been pointed out previously in this department, the item should more logically be credited to net operating revenues than to income deductions. Inclusion in the latter category seriously throws out of line the "coverage" of fixed charges, as shown by the following figures for all class A and B electric utilities in the calendar year 1951 (in millions):

	Usual Method	*Suggested Method*
Utility Operating Income	$1,060	$1,060
Interest Charged to Construction—Credit ..		35
Adjusted Balance		$1,095
Other Income	62	62
Adjusted Gross Income	$1,122	$1,157
Fixed Charges ("Income Deduction")	308	343
No. of Times Fixed Charges Earned	3.65	3.37

In the case of some individual utilities, the resulting difference in the fixed charge coverage would be much greater.

ARTHUR ANDERSEN & COMPANY, the well-known accounting firm, recently issued an interesting 52-page booklet, entitled "Principles Underlying the Capitalization of Interest during Construction." The firm points out that most uniform systems of accounts prescribed for utility companies by regulatory commissions define interest during construction as including "the net cost of borrowed funds used for construction purposes and a reasonable rate upon the utility's own funds when so used." But recent decisions of the Federal Power Commission have raised questions regarding the meaning of the word "interest."

In the narrow legalistic meaning of the word, of course, it denotes interest on money *loaned* to the company. However, the word has also been interpreted in a broader way as "the price of money" or the return on investment in any form—in which event it would include the cost of preferred and common stock money as well as the interest on bonds and debentures. It is in this sense that the term has been employed by the utility industry.

The definition is not important for unregulated industries, but in the case of regulated companies such as utilities it is an important factor with respect to the rate base. The utility must recognize the cost of capital devoted to construction in its accounts, or the cost becomes a loss which is unlikely to be recovered. Of

course if new construction which has not become part of the operating plant were permitted to enter the rate base and rates were fixed accordingly, it would be unnecessary to capitalize the interest during construction—but this is seldom the case. Also, the capitalization of interest is a more exact method of compensating the owners of property for the interim loss of earnings. Moreover, to properly compensate security holders, interest should run from the date when the funds are prudently acquired, rather than from the actual date when they were transferred from cash into materials or plant; for any effort to work out a hand-to-mouth financing method would be difficult and unnecessarily expensive.

MOREOVER, the utility should also be permitted to charge a reasonable rate on its own funds such as retained earnings, amortization moneys, etc., which are used for construction. Another legitimate item would be the fee paid by utilities to lenders for *firm* financial arrangements with respect to loans for construction, which might approximate one per cent per annum. The Federal Power Commission, however, does not recognize the latter as a proper component of construction cost.

In its recent cases the Federal Power Commission has indicated its disagreement with the general practice of capitalizing equity funds employed in construction at a rate reflecting the cost of equity money. (As a practical matter, some utilities charge an over-all rate of 6 per cent on construction funds, corresponding to the usual rate of "fair return.") The commission has also indicated its opinion that interest should only accrue when the funds have been actually *expended* for construction purposes—and then only after all of the *borrowed* money has first been expended. This was the position taken by the examiner in the Northern Natural Gas decision (January 18, 1952). The Federal Power Commission staff presented the following arguments reflecting its position.

> The fair rate of return applicable to equity funds allowed in a rate case has no relation to the rate to be used in computing interest during construction on equity funds. Equity funds do not cost the company anything except for the cost of floating securities. The computation of interest during construction on equity funds at a rate equivalent to the rate of return on common stock is improper since it results in the inclusion of profit in interest during construction. The basis for the staff assumption that all borrowed funds were expended prior to the expenditure of any funds from equity capital is that the company could not prove otherwise and that "companies do not borrow funds to hold the money."

SPACE does not permit a summary of the arguments employed by Arthur Andersen & Company in its rebuttal of the Federal Power Commission contentions. Its conclusion is that "it is scarcely conceivable that a common stock investor, aware of this regulatory attitude together with all of the attendant other risks, would be willing to accept a reduced return during the construction period and thereafter a return which fails to give effect to the risk incurred and the profit foregone. Under this policy there is little incentive to invest in new projects."

The accounting firm suggests that it might be advisable to change the title of the account to read "Cost of Funds Charged to Construction—Cr." or "Return on Construction in Progress" and to revise the text to read: "This account shall include concurrent credits for cost of funds charged to construction based upon a reasonable allowance for the use of all funds during the period of construction. No cost of funds shall be capitalized on plant which is completed and ready for service."

The booklet also contains an analysis of the subject of interest during construction by Professor James C. Bonbright, with a further discussion of the technical issues involved, which will doubtless interest rate experts as well as accountants.

RECENT FINANCIAL DATA ON GAS COMPANY STOCKS

1952 Rev. (Mill.)			4/1/53 Price About	Dividend Rate	Approx. Yield	Share Earnings* Current Period	% Increase	12 Mos. Ended	Price-Earn. Ratio	Payout
		Pipelines								
$ 9	O	East Tennessee Nat. Gas .	8	—	—	$ .07	—	Dec.	—	—
34	S	Mississippi River Fuel ..	39	$2.20	5.6%	3.57	9%	Dec.	10.9	62%
52	S	Southern Natural Gas ...	28	1.40	5.0	2.35	5	Dec.	11.9	60
104	O	Tenn. Gas Trans.	25	1.40	5.6	1.79	37	Dec.	14.0	78
94	O	Texas East. Trans.	18	1.00	5.6	1.11	D29	Dec.	16.2	90
47	O	Texas Gas Trans.	17	1.00	5.9	1.14	D26	Dec.	14.9	88
52	O	Transcontinental Gas	21	1.40	6.7	1.24	D11	Dec.	16.9	113
		Averages			5.7%				14.1	
		Integrated Companies								
102	S	American Natural Gas ...	35	$1.80	5.1%	$2.34	D9%	Dec.	15.0	77%
204	S	Columbia Gas System	14	.90	6.4	.83	D22	Dec.	16.9	108
9	O	Commonwealth Gas	19	.25#	4.8#	.87	18	Dec. '51	21.8	29
8	A	Consol. Gas Util.	13	.75	5.8	1.21	D22	Oct.	10.7	62
174	S	Consol. Nat. Gas	58	2.50	4.3	4.19	D26	Dec.	13.8	60
78	S	El Paso Nat. Gas	35	1.60	4.6	2.93	1	Dec.	11.9	55
29	S	Equitable Gas	23	1.30	5.7	1.83	—	Dec.	12.6	71
13	O	Interstate Nat. Gas	43	2.50	5.8	3.27	1	Dec. '51	13.1	76
10	O	Kansas-Neb. Nat. Gas ..	23	1.12	4.9	1.64	D15	Dec.	14.0	68
63	A	Lone Star Gas	26	1.40	5.4	1.55	D12	Dec.	16.8	90
18	S	Montana Dakota Utilities .	26	.90	3.5	.97	24	Dec.	—	93
13	O	Mountain Fuel Supply ...	21	.80	3.8	1.24	8	Dec.	16.9	65
46	A	National Fuel Gas	16	.80	5.0	1.38	16	Dec.	11.6	58
47	S	Northern Nat. Gas	43	1.80	4.2	2.57	4	Dec.	16.7	70
30	A	Oklahoma Nat. Gas	43	2.00	4.7	3.53	36	Jan.	12.2	57
21	A	Pacific Pub. Serv.	17	1.00	5.9	1.69	15	Dec.	10.1	59
92	S	Panhandle East. P. L.	82	2.50#	3.0	5.00	72	Dec.	16.4	50
8	O	Pennsylvania Gas	18	.80	4.4	1.81	20	Dec. '51	9.9	44
123	S	Peoples Gas Lt. & Coke ..	140	6.00	4.3	8.26	8	Dec.	16.9	73
17	O	Southern Union Gas	25	.80	3.2	1.06	D30	Dec. '51	—	76
159	S	United Gas Corp.	29	1.25	4.3	1.56	—	Dec.	18.6	80
		Averages			4.8%				14.3	
		Retail Distributors								
28	O	Atlanta Gas Light	21	$1.20	5.7%	$2.03	12%	Dec.	10.3	59%
3	O	Brockton-Taunton Gas ...	10	.40	4.0	.44	38	Dec.	22.7	91
44	S	Brooklyn Union Gas	25	1.50	6.0	1.79	D14	Dec.	14.0	84
25	O	Central Electric & Gas ..	13	.80	6.2	.94	D5	Dec.	13.8	85
6	O	Hartford Gas	37	2.00	5.4	2.07	D13	Dec.	17.9	97
11	O	Houston Natural Gas ...	21	.80	3.8	1.32	D11	July	15.9	61
10	O	Indiana Gas & Water	24	1.40	5.8	1.78	D14	Dec.	13.5	79
5	A	Kings County Lighting ...	9	.60	6.7	.81	D5	Dec.	11.1	74
30	S	Laclede Gas	9	.50	5.6	.95	D4	Jan.	9.5	53
24	O	Minneapolis Gas	22	1.15	5.2	1.29	9	Dec.	17.1	89
6	O	Mississippi Valley Gas ..	18	1.00	5.6	1.68	NC	Jan.	10.7	60
7	O	Mobile Gas Service	32	1.80	5.6	3.49	14	Dec.	9.2	52
6	O	New Haven Gas Light ..	27	1.60	5.9	1.43	D7	Dec.	18.9	112
4	O	North Shore Gas	54	3.40	6.3	4.02	D3	Dec.	13.4	85
139	S	Pacific Lighting	59	3.00	5.1	4.97	48	Dec.	11.9	60
12	O	Portland Gas & Coke	21	.90	4.3	1.67	—	Dec.	12.6	54
7	A	Providence Gas	9	.32	3.6	.34	D6	Dec.	—	94
5	O	Seattle Gas	18	.80	4.4	1.17	D17	Dec.	15.4	68
6	O	South Jersey Gas	17	1.00	5.9	.99	13	Dec.	17.2	101
2	O	South Atlantic Gas	13	.70	5.4	.93	D19	Dec. '51	14.0	75
5	O	Springfield Gas Light	32	1.80	5.6	1.93	18	Dec.	16.6	93
21	S	United Gas Improvement .	36	1.72	4.8	2.19**	9	Dec.	16.4	79
31	S	Washington Gas Light ..	30	1.80	6.0	2.33	6	Dec.	12.9	77
		Averages			5.1%				15.1	
		Canadian								
15	S	International Utilities	29	$1.40	4.8%	$1.72	D4%	Dec.	16.9	81%

RECENT FINANCIAL DATA ON TELEPHONE, TRANSIT, AND WATER COMPANIES

1952 Rev. (Mill.)			4/1/53 Price About	Dividend Rate	Approx. Yield	Share Earnings* Current Period	% Increase	12 Mos. Ended	Price-Earn. Ratio	Div. Payout
		Communications Companies								
		Bell System								
$4,040	S	Am. Tel. & Tel. (Cons.)	156	$9.00	5.8%	$11.45**	D3%	Dec.	13.6	79%
29	O	Cin. & Sub. Bell Tel. ..	76	4.50	5.9	4.61	1	Dec.	16.5	98
127	A	Mountain States T. & T.	103	6.00	5.8	6.50	44	Dec.	15.8	92
220	A	New England Tel. & Tel.	113	8.00	7.1	7.25**	D13	Dec.	15.6	110
536	S	Pacific Tel. & Tel.	117	7.00	6.0	8.15**	1	Dec.	14.4	86
68	O	So. New England Tel. .	35	1.80	5.1	1.93	26	Dec.	18.1	93
		Averages			6.0%				15.7	
		Independents								
10	O	Central Telephone	13	$ .80	6.2%	$1.45	19%	Dec.	9.0	55%
2	O	Florida Telephone	12	.80	6.7	.99	1	Dec.	12.1	81
101	S	General Telephone	38	2.20	5.8	3.42	61	Feb.	11.1	64
4	O	Inter-Mountain Tel. ...	11½	.80	7.0	.88	31	Dec.	13.1	91
298	S	International Tel. & Tel.	18	1.00	5.6	2.60	16	Dec. '51	6.9	31
12	A	Peninsular Telephone ..	45	2.40	5.3	3.84	7	Dec.	11.7	63
15	O	Rochester Telephone ..	15	.80	5.3	1.57	26	Dec.	9.6	51
2	O	Southeastern Telephone	12	.80	6.7	1.18	79	Dec.	10.2	68
6	O	Southwestern States Tel.	16	1.00	6.3	1.37	29	Dec.	11.7	73
195	S	Western Union Tel. ...	41	3.00	7.3	1.04	D79	Dec.	—	288
		Averages			6.2%				10.6	
		Transit Companies								
9	O	Dallas Ry. & Terminal .	14	$1.40	10.0%	$2.32	D6%	Dec.	6.0	60%
229	S	Greyhound Corp.	13	1.00	7.7	1.26	D1	Dec.	10.3	80
22	O	Los Angeles Transit ..	10	1.00	10.0	.79	55	Dec. '51	12.7	127
31	S	National City Lines ...	15	1.40	9.3	1.86	D3	Dec.	8.1	75
71	O	Philadelphia Transit ..	5	—	—	Deficit	—	Dec.	—	—
7	O	Rochester Transit	3½	.10	2.9	1.12	—	Dec. '51	3.1	—
27	O	St. Louis P. S. A	13	1.40	10.8	.91	189	Dec.	14.3	154
4	O	Syracuse Transit	18	2.00	11.1	2.47	43	Dec.	7.3	81
24	O	United Transit	3	—	—	.62	29	Oct.	4.8	—
		Averages			8.8%				8.3	
		Water Companies								
		Holding Companies								
26	S	American Water Works	10	$ .50	5.0%	$ .80	4%	Dec.	12.5	63%
4	O	New York Water Serv.	43	.80	1.9	1.98	3	Sept.	21.7	40
		Operating Companies								
3	O	Bridgeport Hydraulic ..	29	$1.60	5.5%	$1.62	D7%	—	17.9	99%
9	O	California Water Serv.	32	2.00	6.3	2.49	21	Feb.	12.9	80
2	O	Elizabethtown Water ..	104	5.00	4.8	5.74	D18	Dec. '51	18.1	87
6	S	Hackensack Water	35	1.70	4.9	2.56	D6	Dec. '51	13.7	66
4	O	Jamaica Water Supply .	31	1.80	5.8	3.08	61	Dec.	10.1	58
3	O	New Haven Water	55	3.00	5.5	2.76	D5	Dec.	19.9	109
1	O	Ohio Water Service ...	24	1.50	6.3	1.77	D7	Dec.	13.6	85
5	O	Phila. & Sub. Water ..	54	1.00	1.9	4.69	61	Dec. '51	11.5	21
1	O	Plainfield Union Water	55	3.00	5.5	4.09	D2	Dec. '51	13.4	73
2	O	San Jose Water	34	2.00	5.9	2.46	12	Dec.	13.8	81
6	O	Scranton-Springbrook .	16	.90	5.6	1.22	30	Sept.	13.1	74
3	O	Southern Calif. Water .	10½	.65	6.2	.74	D7	Dec.	14.2	88
3	O	West Va. Water Serv.	36	1.20	3.3	1.23**	D12	Dec.	—	98
		Averages			5.2%				14.4	

A—American Exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange. D—Decrease. *Earnings are calculated on present number of shares outstanding, except as otherwise indicated. **On average shares outstanding. #Includes stock dividend. NC—Not comparable.

What Others Think

State *versus* Federal Control in the Missouri Valley

THE recommendations of ex-President Truman's Missouri Basin Survey Commission, made public recently, got a cool reception from those favoring a state-controlled agency for the development of the Missouri valley. The majority members of the commission recommended that Congress create a 5-member agency to "co-ordinate and direct development" of the vast resources of the area. The members of the proposed commission would be appointed by the President, would be residents of the valley, and would establish headquarters in the valley itself rather than in Washington. The commission would be empowered to direct Federal resource development activities in the Missouri basin and to co-ordinate these activities with ones undertaken by the various states involved. The proposed commission would "carry out congressional policies regarding land and water use and public power, working with an advisory committee of the state governors."

Three members of the survey commission — Senator Young (Republican, North Dakota), Representative Hope (Republican, Kansas), and H. T. Person, dean of the University of Wyoming Engineering School—strongly dissented on the make-up of the proposed commission, agreeing with the majority for the necessity of a co-ordinating agency, but declaring that it "should be established by a compact to which the basin states and the Federal government are parties." They called the majority proposal a "modified MVA"—one which would deny the states adequate representation. They also characterized as "completely unworkable" a provision allowing any basin state to veto commission operations within its borders. They claimed this would render impossible any complete or practical development of the entire Missouri basin.

THE majority members of the survey commission rejected the state-controlled commission idea on the grounds it would be difficult to get the ten basin states to agree on a compact and that such a commission would increase rather than eliminate the diverse interests of the states involved. The minority declared, however, that "The effectiveness of the compact approach has been adequately tested and thoroughly demonstrated." The United States has participated in the negotiations for all western water compacts, the minority pointed out; "in two of the more recent, relating to the Belle Fourche and Republican rivers, Congress has agreed with the states to a division of jurisdiction over the waters. The next step—the Federal government becoming a formal party to the compact —is logical and inevitable. The compact approach has been suggested and recommended by eminent and practical attorneys and students of government. Such a compact is now being worked out between the states of the Columbia river basin and the Federal government, consent legislation having already passed Congress. Right at home in the Missouri basin, the compact approach has recently received the unanimous endorsement of the Missouri River States Committee consisting of the governors of the ten Missouri basin states."

The members of the survey commission were unanimous in recommending that, whatever its form, the agency to be created should have "broad powers to direct and supervise the Federal agencies in carrying out their development responsibilities, thereby making it possible —for the first time in the Missouri basin

—to give unified and coherent direction to the hitherto unco-ordinated agency programs." There was also general agreement that the present Federal basin program has "major deficiencies," including lack of a clear policy and legislative directive setting forth methods for cost allocation and accounting and a continuous check to see that the intent of Congress is being achieved.

THE 295-page report of the survey group included 51 recommendations on such subjects as land and water resource development policy, state and local participation in projects, and economic procedures. With few exceptions, the recommendations were unanimous. The report proposed a priority order for the use of the Missouri river water: (1) domestic and municipal consumption and pollution control; (2) irrigation and industrial consumption; (3) hydroelectric power; (4) fish, wild life, and recreation; (5) navigation.

Representative Hope said placing navigation at the bottom of the priority list was "one of the best things in the report." Navigation works on the Missouri, including canals and channel deepening, create serious flood-control problems, he pointed out. The report proposed that when navigation works are built, tolls should be levied to help pay for their cost.

The report acknowledged the dispute between "big dam" and "little dam" proponents and recommended congressional authorization of watershed management projects in different sections of the basin. This was a victory for "little dams" advocates—those who assert the way to prevent floods is to "stop the raindrops where they fall" in the uplands and tributary watersheds.

ALTHOUGH Senator Hennings (Democrat, Missouri), vice chairman of the survey group, plans to introduce a bill which would create a Missouri River Basin Commission along the lines recommended by the majority, Representative Hope said he was sure the Eisenhower administration would not favor a commission dominated by the Federal government. Hope plans to introduce a bill embodying the views of the minority and has predicted its approval. "Interstate compacts are the coming thing," Hope said. "They give the people a greater voice than they have in such Federal agencies as the Tennessee Valley Authority."

Hennings emphasized that the majority had sought to achieve a middle ground between two extremes. While it was regrettable there was dissent in the report, he stated, the commission was not set up to support a particular plan of land and water use, but to bring to the people of the area a better understanding of the complex problems facing them.

The *St. Louis Post-Dispatch* called the majority's recommendations the best proposal, short of one patterned on the "brilliantly successful Tennessee Valley Authority," that has been offered to date. It disagreed with the minority views on state control and said that "If this point of view should prevail, the Missouri valley would be back again in the chaos from which it is struggling to emerge, and with the only hopeful alternative thrown away."

ALLIED to and more recent than the survey group report was a meeting held at the White House on February 25th to consider a new approach to Federal policies governing water resource development. "Co-operation" was stressed by President Eisenhower as the core of any program which will get the support of his administration. The meeting was attended by Secretary of Interior McKay, Secretary of Agriculture Benson, Chief of Army Engineers General Sturgis, Director of the Budget Dodge, and several Congressmen.

An end to conflict and duplication of effort between government agencies was seen to be the goal of a new plan of approach. While the problem of hydroelectric development was not included in the discussion, there was reference made to the dispute between the "little dam" and "big dam" advocates apparently settled in favor of the former in the survey com-

mission report on Missouri basin development. The White House meeting was regarded as the first step toward the formulation of the administration's own regional development program. The emphasis on "co-operation" lends support to the view, expressed by Representative Hope, that the administration will back the interstate approach to general basin development plans.

Clarification of the administration's program with respect to these problems may not be forthcoming until next fall when President Eisenhower is scheduled to address a mid-century conference on natural resources. In accepting the invitation from the sponsoring organization, Resources for the Future, Inc., Eisenhower said he is asking the Secretaries of Interior and Agriculture, and other Federal officials concerned with resources, to help prepare for the conference. The President stressed that both private groups and the government have "a considerable responsibility for the better management of resources."

Survey Shows Loss in Transit Ownership

In an effort to shed light on the factors that have produced the present financial crisis in New York city, *The New York Times* has made a survey of the financial structures and operations of ten leading cities in the United States. The financial difficulties of New York city were brought to a head by the continued deficit operation of the city's transit system. The New York City Board of Estimate was recently forced to choose between a transit authority and a budget cut of $170,000,000 for the coming fiscal year. It chose the transit authority.

Acceptance of the authority will permit the city to make use of a $50,000,000 increase in real estate taxes. This increase, together with the elimination of an estimated transit deficit of $47,000,000 when the authority takes over, will narrow the anticipated budget deficit to $73,000,000. Higher transit fares are certain to be the result of the board's action. It is generally expected that the 10-cent fare will go up to 15 cents.

The *Times* survey covered the cities of Philadelphia, Los Angeles, Detroit, Baltimore, St. Louis, Boston, San Francisco, Pittsburgh, Milwaukee, and Houston. With respect to transit operations, the survey included Chicago and Cleveland. It was shown that in all cities where such facilities are owned by the municipality, there were deficits, while operation by public authorities was self-supporting. Private operations in the surveyed cities produced operating surpluses which, however, were generally insufficient to yield to the operators what they considered a fair return.

All of the cities surveyed had higher fares than the 10-cent rate prevailing in New York. Basic fares ranged from 15 cents in Philadelphia, Milwaukee, Houston, San Francisco, and Los Angeles to 20 cents in Chicago, Detroit, Cleveland, and Pittsburgh. Detroit and San Francisco showed deficits under public operation, while Chicago and Cleveland, under authority operation, were able to meet operating costs. In Boston, where operation is by a state commission, there was a deficit, shared by the several communities served by the commission's lines. Boston contributed the major share of the money needed to close the gap between operating costs and operating revenues.

The survey brought out one significant fact that might well have a bearing on the fiscal crisis now facing New York. The city is spending in 1952-53 only $633,975 for city planning, or just 8 cents per capita. The only city of those surveyed that spends as little per capita is St. Louis. Milwaukee is spending 32 cents. In the case of New York, this slight expenditure is noteworthy because of the fact that planning for transit development is one of the functions of the City Planning Commission. Hampered by lack of funds, the commission has been unable to operate in this field.

The March of Events

In General

Laws Shape Power Policy

PUBLIC and private power officials of the Pacific Northwest recently were pledged that public power policies for the region would be changed only by legislation, not by appropriation reductions.

The assurance came from Chairman Ben Jensen (Republican, Iowa) and Representative W. F. Norrell (Democrat, Arkansas) of the House Appropriations Committee at the close of a closed-door hearing in Washington, D. C., arranged by the Northwest group to seek a clarification of prospective policies on Bonneville transmission line planning.

Jensen had suggested at an earlier meeting to review BPA's budget that his committee might allow only for major transmission lines, leaving it to local utilities to construct supplementary facilities.

California

New Rate Increase Plea Filed

IN the midst of a state public utilities commission hearing on the request of Southern Counties Gas Company for rate increases adding 88 cents a month to the average consumer's bill, the company boosted its plea recently to an estimated 96-cent average.

The new request would give the company additional revenue of $5,190,000 a year against $4,849,000 under the originally sought hike, company officials said. Company spokesmen added that the increase in the request had become necessary because of the $308,000 yearly wage raises agreed to under the company's recent settlement with unionized employees.

Filing of the increase request came while Assistant City Attorney Roger W. Arnebergh of Los Angeles had expressed the city's official opposition to the original petition. He contended that even the first request would provide the company with a return of 8.32 per cent on its investment.

Georgia

Gas Boost OK Asked

THE Atlanta Gas Light Company recently asked the state public service commission for authority to pass on to its industrial customers an increase in the pipeline price of natural gas.

The Southern Natural Gas Company, which supplies the Atlanta Company with gas, early this month put into effect a price increase of four cents per thousand cubic feet.

Commission Chairman McWhorter said the Atlanta Company proposes to maintain its present spread of 12.8 per cent between its cost of the gas and the selling price to consumers. This, he said,

would increase the cost to consumers to 20.3 cents per thousand cubic feet.

An Atlanta Gas Light Company official estimated that this would cost Georgia industrialists about $2,130,000 a year and pointed out that it would be the first increase in natural gas prices in nearly twenty years.

Iowa

Commission Legislation Killed

A BILL proposing the creation of a state public service commission to regulate Iowa utility firms was apparently killed recently when the state senate sent it back to the utilities committee.

Motion to return the bill to committee was made by the chairman of the group, who said he had found "no public interest in the measure, but had heard many objections."

Michigan

Strike Ban Attacked

PROPOSALS for sweeping changes in the Hutchinson Act were contained in a measure introduced in the state legislature last month. The law bans strikes by public employees. Senator Blondy, of Detroit, says his measure is designed to permit the State Labor Mediation Board to enter a dispute on its own motion and create a governor's fact-finding panel. It was identical to the proposal sidetracked in committee last year after a long struggle by Detroit officials, which ended when the mayor appeared before the senate labor committee.

Blondy said it was the governor's bill and he was told to introduce it.

After entering a dispute between public employees and a unit of government, the mediation board would attempt to settle the difference. After thirty days, the board could certify the dispute to the governor. At this point, the governor could name a 3-member fact-finding commission to conduct informal hearings.

Senator Hutchinson, who sponsored the original act, attacked the bill and said he would oppose the clauses which differ from his planned changes to install a fact-finding panel which would enter disputes only at the request of both labor and management.

He said he would oppose the power of the mediation board to enter the dispute on its own motion and the two 30-day time elements in the bill.

Mississippi

Severance Tax Increase Sought

GOVERNOR White announced last month that he would support an interim legislative study committee's proposal for an increase from 6 to 8 cents in the state's oil and gas severance taxes.

The proposal will be considered by a special session of the state legislature which the governor said would possibly be called about mid-May.

Nebraska

Strike Bill Killed

A BILL that would have changed the state's 1947 public utility anti-strike law in a manner to permit strikes in privately owned public utilities was killed last month by the state legislature's labor committee.

Nevada

Governor Signs Bills

GOVERNOR Russell last month signed into state law a bill creating a state oil and gas conservation commission. The measure is similar to such laws already in effect in about twenty oil- and gas-producing states.

At the same time, Governor Russell applied for an associate membership in the Interstate Oil Compact Commission, which seeks to prevent waste of oil and gas products. Nevada will be entitled to a full membership on the commission should a well drilled in the state start to produce.

The governor has also signed into Nevada law a bill calling for three full-time state public service commission members.

New York

Ordered to Cancel Rate Boost

THE state public service commission last month ordered Niagara Mohawk Power Corporation to cancel the $2,400,000 electric power rate increase the firm proposed for Niagara frontier industrial and commercial customers.

The commission said the proposed rate boost was "not justified either from a revenue need or from the standpoint of power costs."

It said although the earning prospects of the company's western division were not up to those of the company as a whole "any proposal to raise certain rates in the western division should be at least balanced by reductions elsewhere."

Under tariffs filed last June 30th, the company had proposed to boost industrial service rates in the western division that would have affected large consumers in an area including Buffalo, Lackawanna, Niagara Falls, and adjacent territory. The general effect of the proposal would have been to boost rates from 75 to 80 cents per kilowatt for all use in excess of 2,000 kilowatts monthly.

Gas Rate Cuts Barred

THE state public service commission announced early this month that there would be no "downward revision" in the gas rates of the Consolidated Edison Company because existing rates "do not produce an excessive rate of return on the property used in providing service to the public."

In a 141-page report by a hearing examiner, the commission said some minor changes in tariff would be made which will result in "some increases" to commercial heating consumers.

North Carolina

Committee Kills Bill

A NORTH CAROLINA senate committee last month killed a bill which would have changed the rate-making base for public utilities in the state. Rates would have been based largely on the original cost of a utility's property, less depreciation, rather than on replacement costs.

Vermont

Seeks Broader Authority

IN its biennial report to the state legislature, the state public service commission recently requested the enactment of legislation to permit it to appoint staff members as hearing examiners to expedite the disposition of rate cases and other matters in its jurisdiction. Present law requires hearing before one or more of the three commissioners.

Progress of Regulation

Agreements between Rural Electric Co-operative and SPA Violate State and Federal Laws

THE Arkansas Supreme Court upheld a decision by a state circuit court reversing the order of the Arkansas commission in *Re* Arkansas Electric Co-op. Corp. (1951) 91 PUR NS 8. The commission had authorized Arkansas Electric to construct and operate electric generating and transmission facilities under agreements with the Southwestern Power Administration.

These agreements provided for the sale and exchange of electric energy and for construction and lease of transmission facilities. The court held that they were not within the scope of authority of a corporation organized under legislation relating to co-operatives. The court also held that the contracts were contrary to Federal law.

The state law permits a co-operative to sell electric energy "to its members only." Persons in rural areas not receiving central station service are eligible to membership. The court said:

> The statute could hardly be more explicit in its declaration that a co-operative can sell power to its members *only* and that its membership is limited to persons in rural areas who agree to *use* electric energy. The legislative design is evidently to bring the advantages of electricity to farmers and to residents of communities having a population of not more than 2,500.

SPA, the court continued, is not in a rural area, it is not without central station service, and it does not propose to use this power as a consumer. To the contrary, SPA's Administrator had testified that he intended to resell this power to cities and towns, to large manufacturing concerns, and to anyone else buying power in wholesale quantities. He also expected to serve persons and municipalities already being served by utility companies.

The court rejected arguments that the agreements should be upheld either as being incidental to the co-operative's effort to serve its component corporations or as merely involving the disposal of surplus power. What the co-operative proposed to do was to sell its entire output to SPA for forty years and to sell its transmission lines to SPA outright. If there were any sale of surplus power, it would be in the resale by SPA to Arkansas Electric since the bulk of the power must evidently be sold in other transactions.

Congress authorized multipurpose dams from which SPA derives its power. Congress appropriated funds for the construction of these dams upon assumption that the current would be sold as peaking power rather than as firm power. The statute, in the opinion of the court, contemplated the sale of hydroelectric power only; that is, power generated at reservoir projects. SPA might perform its obligations under wheeling contracts but it might not enter the competitive retail market by firming up its hydro power with steam power. The court concluded that the SPA-Arkansas Electric con-

tracts were contrary to Federal law as well as state law. *Arkansas Electric Co-op. Corp. v. Arkansas-Missouri Power Co. 4-9847, February 23, 1953.*

Testimony As to Current Cost of Capital Rejected and Rapid Amortization Analyzed

THE Washington commission, in authorizing a temporary rate increase for an electric company, observed that a 5.85 per cent return was sufficient to maintain the company's financial integrity and enable it to obtain new capital in competition with the securities of other companies.

The company waived any right to require the consideration of a reproduction cost new rate base. The commission ruled that, in the light of this waiver, evidence offered to show the current cost of capital was unimportant. Such testimony, the commission continued, is an attempt to reach the same end result as a reproduction cost rate base by an adjustment in the rate of return.

No working capital allowance was made because of the fact that there was a greater lag in the payment of company obligations than "in dollar days in the collection of revenues." The average balance of customer contributions in aid of construction was deducted from the rate base.

In choosing the proper accounting method to be followed in regard to defense facilities undergoing accelerated amortization, the commission remarked:

> If tax costs were normalized for rate making during the 5-year rapid amortization period, the subscriber would be providing the company with a cost which the utility is not, at this time, required to meet. This method would recognize the normalized tax costs as an actual cost of operation at the present time, though deferred as to payment which would begin at the close of the rapid amortization period and continue throughout the remaining life of the project. To insure the best interests of the public involved, it would be necessary to continue the normalization of tax costs after the rapid amortization had ended and reduce tax expense allowed in establishing rates from those which would then actually exist. This would remove the additional tax liability due to the previous exhaustion of depreciable basis for tax purposes which had not been considered in rate making.

The commission took some pains to point out that "the normalization of taxes should be continued until such time as that amount of money which has been collected from the subscribers in advance of needs as indicated by actual costs shall have been returned through credits to tax expense as the deferred tax liability develops." *Public Service Commission v. Washington Water Power Co. Cause No. U-8398, January 29, 1953.*

In a subsequent order exclusively concerned with the accounting aspects of the case, the commission directed that during the 60-month period of rapid amortization these procedures should be followed: (a) income statements should reflect actual Federal tax on income liability applicable to net taxable income after the application of the tax benefit resulting from the accelerated amortization; (b) Federal taxes on income should be footnoted so as to indicate the amount of the tax deferment due to the accelerated amortization; (c) transfers to earned surplus should be divided into two parts, one being equivalent to the estimated deferment of Federal tax on income due to the accelerating depreciation and credited to "Earned Surplus—Restricted (Amount of Federal Income Taxes Deferred Due to Accelerated Amortization of Certain Facilities)" and the other part being credited to "Earned Surplus."

After the 60-month period of rapid amortization, the company's income statements and transfers of net income

to earned surplus should reflect actual Federal tax on income liability with no benefit reflected from the fully amortized investment. Federal income taxes should be broken down to reveal the estimated amount of the deferred Federal tax on income which is an excess due to the earlier complete amortization of the defense facilities.

Net income transfers to earned surplus during this postamortization period should be in total to "Earned Surplus" and an amount equal to one-twelfth of one twenty-fifth of the total balance accumulated in "Earned Surplus Restricted" during the 60-month period should be transferred each month to "Earned Surplus" until "Earned Surplus Restricted" is exhausted. As long as any balance remains in the "Earned Surplus Restricted" account the company should footnote the balance on its financial statement. *Re Washington Water Power Co. Cause No. U-8620, February 28, 1953.*

Gas Sales by Regulated Company in the Field Exempt from Regulation

THE Federal Power Commission, in view of the exemption of production and gathering by § 1(b) of the Natural Gas Act, in *Re* Phillips Petroleum Co. (1951) 90 PUR NS 325, decided that it had no jurisdiction over a petroleum company producing gas and selling it to an interstate pipeline company. The commission has now decided that such sales are exempt even though the company producing and gathering the gas for sale to another company is a natural gas company subject to regulation under the Natural Gas Act. The commission thought it unnecessary to determine whether such sales were in interstate commerce.

In the case of Panhandle Eastern Pipe Line Company, one of the purchasers of gas, sales were consummated at the wellhead. In the case of Colorado Interstate Gas Company, another purchaser of gas, the sales were consummated at the end of the producing company's gathering system. All sales, said the commission, were made during the course of production and gathering, or at least were incidents of, or were activities related to, those processes, thus coming within the exemption of "production or gathering" in § 1(b) of the act.

The situation, the commission said further, was not like that in *Re* Interstate Nat. Gas Co. (1943) 48 PUR NS 267. Interstate had been found to be engaged in transporting the gas after the completion of production and gathering and prior to any sales, and consequently its sales did not fall within the exemption. *Re Kansas-Colorado Utilities, Docket Nos. G-1595, G-1870, Opinion No. 245, February 4, 1953.*

Enlarged Natural Gas Lines Not Exempt from Certificate Requirement under Replacement Rule

A RULE of the Federal Power Commission under § 7(c) of the Natural Gas Act exempts from certificate requirements facilities which constitute the replacement of existing facilities when this does not appreciably change the daily delivery capacity of the existing pipeline system. The commission has ruled, however, that this does not exempt a substantial enlargement of a line enabling a company to commence direct service to an industrial plant which previously used gas only to supply domestic requirements of tenants occupying houses owned by the industrial company.

Tenancy in such houses is restricted to employees, former employees, and prospective employees. Gas is metered to such tenants and monthly bills rendered on the basis of meter readings. Payment

is made through deductions from company payrolls.

The natural gas company, according to the commission, sought to extend the regulation to cover a much broader area than was intended to be embraced. Under the company's interpretation, the capacity of any natural gas company's branch or terminal market line, irrespective of length or size, could be increased by replacement without a certificate so long as the capacity increase does not appreciably change such company's over-all system capacity.

The commission said the regulation was not intended, nor had it been construed, to achieve this result. Experience in the administration of the Natural Gas Act had indicated that replacements of existing facilities might properly be considered exempt from commission scrutiny where they did not appreciably increase the delivery capacity to markets presently served and, therefore, did not substantially alter those factors of public convenience and necessity upon which the commission had already passed.

The Federal Power Commission continued:

> However, the replacement of an existing line which results in an appreciable change in the daily delivery capacity of such line might affect the ability of the natural gas company to render adequate service to customers served from the particular line, or impair the ability of the company to render adequate service to customers served from other parts of the pipeline system. In such circumstances a determination must be made anew as to what is required by the public convenience and necessity.

The company advanced the further argument that since the replacement facilities were intended to serve direct industrial customers, the commission was without jurisdiction to require a certificate; but the commission said that its consistent position has been that while it does not have jurisdiction over a direct sale of gas as such, it is authorized to determine whether facilities used in either transporting gas in interstate commerce or the sale of such gas for resale might be required by public convenience and necessity. Jurisdiction over transportation in interstate commerce, said the commission, includes authority to make a determination as to whether the utilization of facilities—replacement facilities or new facilities—to make a direct industrial sale may impair the ability of a company to continue adequate service to its customers.

The commission also rejected a contention that the company was not required to file an executed service agreement under its effective rate schedules for sales made to the industrial company for resales to employee-tenants. The company emphasized the industrial company's nonpublic utility status and sought to attribute a nonpublic status to the consumers. The commission did not believe it necessary to make overly fine distinctions to conclude that the consumers were public consumers and that their use of gas constituted public consumption. It also believed that the regulation or nonregulation of the industrial company, as a public utility, in no way served to alter the public nature of its resales of gas. *Re Ohio Fuel Gas Co. Docket Nos. G-2011, G-2031, Opinion No. 243, December, 24, 1952.*

System-wide Cost Study Made in Fixing Natural Gas Rates

THE New Mexico commission authorized a natural gas company to increase rates to yield a return of 6.64 per cent. Such a return was not considered excessive. It was deemed necessary to maintain the company in a sound financial condition to enable it to attract additional capital on reasonable terms. The need for increased rates resulted from increases in wholesale rates imposed upon the company by a natural gas pipeline company under a new schedule

filed with the Federal Power Commission.

The company furnishes service in Texas as well as in New Mexico. It advised the commission that rate increases had been authorized in Texas. The commission's authority to fix natural gas rates is limited to the state of New Mexico. The commission held, however, that this did not mean that it must blind itself to the operations of the company as a whole in appraising revenue needs. It said:

> . . . not to rely upon a system-wide cost study with all of its necessary assumptions and inherent uncertainties as to accuracies, in the opinion of the commission, would be a backward step in the regulatory process and would result in needless delay and expense without providing any assurance that the over-all results obtained would be equitable to the company or consumers as a whole. The commission believes that this type of co-operative procedure is conducive to effective regulation, and consequently of greater benefit to the public. There is no doubt that the operation of the company's facilities on an integrated basis in serving the areas developed in Texas and New Mexico, is more economical than furnishing this service to each area by separate, independent operating organizations. In the opinion of the commission, it follows that effective and equitable regulation requires consideration of system operation.

Re Lea County Gas Co. Case No. 388, February 25, 1953.

Maintenance of Credit Basis for Rate Increase

THE Massachusetts Department of Public Utilities authorized a gas and electric company to increase rates to yield a return of 6.19 per cent. Such a return, it concluded, would be adequate to preserve the company's financial integrity and keep it in a healthy operating condition.

The company's proposals contemplated decreases in gas rates and increases in electric rates. It was pointed out that each department of a combined company should carry its own weight. One class of consumers should not be made to bear more than its share of the burden of the company as a whole.

The company pays an average interest rate of 3.084 per cent on long-term debt capital. Its debt ratio is about 27.3 per cent. The department found that the company must pay dividends adequate to yield about 5.52 per cent on the par value of its securities, plus paid-in premiums, in order to market its securities and to maintain its credit. It also found that the company should not pay out more than 75 per cent of its net earnings as dividends. Accordingly, the company would have to earn 7.36 per cent on its equity securities in order to pay out the dividends found necessary.

The department observed that it has looked askance at a debt ratio such as this company's. On a 50 per cent debt ratio the return would be about 5.22 per cent. The department believed that future securities would be issued in the form of debt, and the company's officers so testified. On the basis of the existing capital structure the requisite composite return on the company's invested funds would be 6.19 per cent. *Re Lynn Gas & E. Co. DPU 10056, 10057, February 24, 1953.*

Interstate Commerce Commission Has Primary Jurisdiction Over Service Dispute between Carriers

A FEDERAL district court denied a water carrier a preliminary injunction to restrain an alleged conspiracy by certain railroads to deny the water carrier the interchange and use of freight cars. The court granted the rail-

roads' motion to dismiss the complaint.

The problem facing the court was whether or not the Interstate Commerce Commission should have primary jurisdiction. The court would have jurisdiction only if the commission lacked power to grant relief.

Such a situation, for example, would arise from a conspiracy to manipulate rates. In this instance, the alleged illegal acts were those arising from an agreement by the railroads denying the water carrier the use and interchange of railroad freight cars. Any rule or agreement as to the interchange or use of freight cars would be subject to the regulation and supervision of the Interstate Commerce Commission. Therefore, it was held, injunctive relief could not be granted as the Interstate Commerce Commission had primary jurisdiction over the controversy. *Seatrain Lines, Inc. v. Pennsylvania R. Co. et al. 108 F Supp 113.*

Other Important Rulings

A FEDERAL district court held that the rule that the structure of a rate schedule clause calls in particular measure for the use of that enlightened judgment which the Interstate Commerce Commission by training and experience is qualified to form, and that it is not the province of a court to absorb this function to itself, is equally applicable to all orders of the commission. *Herrin Transp. Co., Inc. et al. v. United States, 108 F Supp 89.*

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MARYLAND PUBLIC SERVICE COMMISSION

Re Chesapeake & Potomac Telephone Company of Baltimore City

Case No. 5257, Order No. 49685
January 23, 1953

APPLICATION *by telephone company for authority to increase rates; temporary rate increase authorized. For earlier Commission decision in same proceeding, see (1952) 93 PUR NS 215.*

Return, § 26 — Cost of capital — Savings effected by capital structure.

1. The Commission, in determining a return allowance for a telephone company, gave consideration to savings which would have been effected by the company under an appropriate equity and debt capital structure, p. 100.

Return, § 41 — Intercorporate relations — Tax savings of parent.

2. Savings effected by a parent telephone company in filing a consolidated income tax return do not affect the earnings of an intrastate operating company because of the difficulty of requiring the parent company to pay to the local company any portion of its tax savings, p. 100.

Return, § 111 — Telephones.

3. Temporary rates were authorized to afford a telephone company a return of 5.803 per cent on its rate base, p. 101.

Rates, § 630 — Temporary telephone rates.

4. Temporary telephone rates were approved where rates previously authorized were not affording the company a fair return and where a hearing on new permanent rates would require more than the 90-day period established as a condition precedent to the authorization of temporary rates, p. 101.

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Return, § 41 — Intercorporate relations — Tax savings of parent.

Statement, in dissenting opinion, that if a parent telephone company refused to give a subsidiary any part of the benefits which it received by virtue of filing a consolidated income tax return with the subsidiary, it would be entirely proper for the Commission to fix such a rate of return to the subsidiary within its jurisdiction as would withhold from the parent the full benefit of a return on its stock to which it would otherwise be entitled, p. 103.

Return, § 26 — Cost of capital.

Statement, in dissenting opinion, that if an operating telephone company were to issue bonds and borrow money from the public, instead of borrowing from its nation-wide subsidiary, the intrastate customers of the company would benefit greatly with a lower cost of capital because of the fact that a 100 per cent interest deduction on capital cost would be allowed, p. 103.

(DAVIS, Commissioner, dissents.)

APPEARANCES: Joseph Allen, People's Counsel, and Jacob D. Hornstein, Assistant to People's Counsel; Thomas N. Biddison, City Solicitor, Edwin Harlan, Deputy City Solicitor, and H. Donald Schwaab and Hugo A. Ricciuti, Assistant City Solicitors, for the mayor and city council of Baltimore; William G. Gassaway and Blake T. Newton, for The Chesapeake and Potomac Telephone Company of Baltimore City.

By the COMMISSION: The Chesapeake and Potomac Telephone Company of Baltimore City instituted proceedings before this Commission, in Case No. 5176, to secure increased rates, and, on March 11, 1952, 93 PUR NS 215, the Commission set the fair value for rate-making purposes of the company's property used in the rendition of Maryland intrastate telephone service on September 30, 1951, as $118,279,156 and, in order to provide a return thereon of from 5.75 per cent to 6 per cent found reasonable and fair, the company was authorized to increase the 5-cent pay-station charge to 10 cents. This increase was estimated to produce additional gross revenues in the amount of $943,000 annually and, giving effect to the 52 per cent Federal income tax rate, additional net of $452,640. The utility had sought additional net income of $2,310,000, to provide which an increase of rates of about $5,000,000 would have been needed.

The company on March 31st filed its bill of complaint in the circuit court No. 2 of Baltimore City alleging that the value of its property as determined by the Commission was much less than the actual fair value and that the failure to make any allowance for cash working capital in computing the rate base was unreasonable and unlawful. The court was asked to remand the case to the Commission with direction to it to redetermine the rate base according to rules, guides, and standards of law as determined by the court. People's counsel and the mayor and city council of Baltimore filed a cross-bill in the same court asking that the increase in the coin-box charge and the valuation found by the Commission be set aside, and that the Commission be permanently enjoined from finding the fair value of the company's property in excess of net original cost. In the court's opinion of September 15, 1952, 95 PUR NS 129, Chief Judge Smith held that the rate base determination was not supported by substantial evidence and that the rate of return was set without giving weight to certain tax considerations. While by the decree the Commission's order was set aside and the case remanded for further consid-

eration, the court granted a stay of its order pending appeal, conditioned upon the company filing a bond in the amount of $1,000,000. The court of appeals in an opinion filed on December 5, 1952, — Md —, 97 PUR NS 50, 93 A2d 249, reversed the trial court and dismissed the bill and cross-bill. The effect of the court of appeals' decision was to uphold the Commission on all disputed points.

While the litigation in the circuit court No. 2 of Baltimore City relative to Case No. 5176, *supra,* was in progress and on August 20, 1952, the application herein was filed by The Chesapeake and Potomac Telephone Company of Baltimore City and by it the company asks that the Commission allow increased rates to produce approximately $830,000 additional annual net income in order to restore the earnings to the level authorized by the Commission's decision of March 11, 1952, in Case No. 5176, *supra.* To obtain this additional net an increase of about $1,800,000 in gross revenues will be required.

The company now seeks the establishment of a temporary schedule of rates under the provisions of § 372 of Art 23 of the Annotated Code of Public General Laws of Maryland (§ 31 of Art 78 of the 1951 Code) which authorize the Commission, as an emergency measure, to fix a temporary schedule of rates when it finds that:

(1) The corporation's operating income is less than the amount required for a reasonable return upon the value of its property used and useful in rendering service to the public; and

(2) A hearing to determine all the issues involved in the final determination of the rates will require more than ninety days.

Such temporary rates are limited to an initial period of not more than nine months, and a further period of not more than three months, and the law requires that bond be given by the utility to insure prompt refund of all amounts collected in excess of such rates and charges as may finally be set by the Commission. The same section also provides for the establishment of temporary reduced rates under certain conditions.

Hearing was opened on September 15th at which three company witnesses testified in support of the application and presented exhibits in connection with their oral testimony. Hearing was resumed on December 17th after the decision of the court of appeals when the company's general accounting supervisor, who had testified at the earlier hearing, introduced revised exhibits bringing up to October 31st the balance sheet, income statements, and other figures which, in the exhibits originally offered, were as of July 31st.

As less than a year ago the Commission passed upon the rates of the company and as the court of appeals, just a little over a month ago, sustained the action of the Commission in every respect, the areas of difference or dispute in the present proceeding are very narrow. This is recognized by both the applicant and those appearing in behalf of the users of the service. Actually, were it not for the fact that at the conclusion of the hearing people's counsel stated that he desired to look further into the question of the treatment of Federal in-

come taxes by the parent and subsidiary companies of the Bell System and requested additional time for this purpose, the record developed at the hearing upon the application for temporary rates in all probability would have been taken as the record with respect to the permanent rates as well.

Starting with the Commission's valuation of $118,279,156 and adding net additions, with the necessary adjustment for changes in materials and supplies, the value of the company's property used in rendering Maryland intrastate telephone service is shown by company Exhibit No. 6A to be $132,892,089 as of October 31, 1952, and the intrastate net operating income for the test year $6,989,382, which equates to a return of 5.26 per cent upon such valuation. The proposed rates, the company estimates, would, for that same year, have increased the return to 5.91 per cent. This return, it is to be noted, is slightly less than the rate of return of 5.96 per cent which, it had been computed, would be earned by the utility under the rates previously fixed and which return the court of appeals' opinion characterized as "one of the lowest in the nation." The company's figures for the year were obtained by taking the first ten months of 1952, equated to an annual basis, with adjustments to reflect current operating conditions. Included in these adjustments is the reduction in depreciation accruals of about $170,000 a year which, though not formally prescribed until July 30, 1952, was made retroactive to January 1, 1952.

[1, 2] In the determination of the rate of return in Case No. 5176, 93 PUR NS 215, and in this case, the Commission has given consideration to savings which would have been effected by the company if the company had appropriate equity and debt capital. It does not appear to this Commission how the tax saving effected by the American Telephone and Telegraph Company (the parent company) in filing a consolidated return would result in any saving to The Chesapeake and Potomac Telephone Company of Baltimore City. It is not apparent to the Commission how it can require the parent company to pay to the local company any portion of the taxes it thus saves.

The failure of the company to earn the return found reasonable by the Commission in Case No. 5176, *supra*, is principally due to higher wage rates which became effective after the Commission's decision in that case, though the continuing increase in the investment required to serve additional subscribers has played some part in the situation. After the Commission's decision was rendered, the company has concluded contract negotiations with the three unions representing nearly 9,000 of its employees, the over-all effect of which was to increase the wages by about $2,400,000 on total company operations.

To provide the additional revenue to offset the increased costs of operation since the entry of the Commission's order and to bring the earnings within the range set by the Commission, the company proposes increases of 25 cents a month for some subscribers and 50 cents for others. In addition, such exchanges as have outgrown their classifications as heretofore set and authorized by the Commission will be reclassified, and in four

cases, where the flat rate calling areas are to be extended in order to meet the needs and wishes of the subscribers, the increased number of telephones within the larger calling areas requires the reclassification of some of the exchanges.

[3] The company estimates that if all the changes it proposes are made effective, its net income will be increased about $863,000 for the year. People's counsel counters with the proposal that, where the company suggests increases of 25 cents and 50 cents, increases of 20 cents and 35 cents, respectively, together with the proposed reclassifications, would bring a net increase of $661,000 and allow a return of 5.803 per cent if the twelve months ended October 31, 1952, were used as the test period, instead of the period used by the company, i. e., the ten months ended October 31, 1952, annualized.

[4] That the company is not earning the return found reasonable and fair by the Commission is conceded. Nor is it questioned that the hearing will require more than the ninety days set by law. Thus both the statutory requirements for temporary relief have been met.

The income under the rates submitted herein by the company is expected to bring the return within the limits heretofore set by the Commission as reasonable, and the increase appears to be properly allocated between the various classes of subscribers in the schedules of charges set forth in company Exhibit A.

It is the conclusion of the Commission that the rates proposed by the applicant should be permitted to be made effective as a temporary measure, conditioned upon the company giving a satisfactory bond in sufficient amount to insure the protection of the interests of the users of the service.

An appropriate order to give effect to these conclusions will be entered.

DAVIS, Commissioner, dissenting:

1. The Public Service Commission of Maryland, in Case No. 5257 (printed herewith), is asked to establish temporary rates which will produce an income which is fair and equitable. According to the decision of this Commission, approved by the court of appeals' opinion of December 5th, — Md —, 97 PUR NS 50, 93 A2d 249, this was between 5¾ and 6 per cent. According to the provisions of § 372 of Art 23 of the Annotated Code of Public General Laws of Maryland (§ 31 of Art 78 of the 1951 Code), the Commission is authorized, as an *emergency* measure, to fix rates if the operating income is *less* than the amount required for a reasonable return upon the value of its property used and useful in rendering service to the public. It is, therefore, the opinion of this Commissioner that a figure for such *temporary* rates should be as nearly as possible to the minimum and not the maximum, even though this happens to be only ¼ of one per cent. The return is not "less" until it falls below 5¾ per cent. To the consumers of Maryland who pay this bill it amounts to over $300,000. This will not affect the rapidly growing areas where new construction is prevalent, Baltimore City, Baltimore county, Silver Spring, or Salisbury, but it will greatly affect other areas throughout the state, such as Cumberland, where the recession has already made serious inroads in the people's economy. It is quite

evident that there will be, by even the small increase, a sharp curtailing and eliminating of telephone service in these retarded areas. It would, therefore, appear that the telephone company, instead of gaining customers, would lose many and might even have a net loss of the number of telephones in use in Maryland at the end of next year.

2. The majority stresses the fact that the opinion of the court of appeals in December, *supra*, 97 PUR NS at p. 62, in which it states that the rate of return allowed is "one of the lowest rates in the nation," is one of gratification to this Commission and to the Chesapeake and Potomac Company users.

However, this statement is based on a chart included in the company's brief, which was never in evidence before the Commission nor before the circuit court, nor did the chart indicate whether the rates of return were based on original net cost or on a value in which reproduction cost was given effect. If the higher rates of return, which appear in this chart, were based on net original cost, it is quite possible that they would actually be lower than that granted to the C. & P. on a rate base which included about $3,000,000 above net original cost.

Among the states where the rate of return is greater than that allowed by this Commission are the following:

Virginia 6 per cent, Florida 6 per cent, Massachusetts 6.23 per cent, Missouri 6.45 per cent, Nevada 6.47 per cent, Michigan 6.5 per cent, Alabama 6.6 per cent, and three states lower—North Dakota 5.5 per cent, Oklahoma 5.6 per cent, Wisconsin 5.7 per cent. However, all of the above jurisdictions base the rate of return on *net original cost*.

3. The evidence in this case showed that by filing a consolidated return, the A. T. & T. effected savings in its Federal income taxes for the years 1950 and 1951 of approximately $12,000,000. The amount of Federal taxes accrued on the books of the C. & P. Company, however, are practically the same as those which the company would have paid had it filed separate returns. The difference was only $12 according to the testimony of the company's witness. The C. & P. Company receives no benefit whatsoever from the savings which the consolidated return produces.

In Case No. 5176, 93 PUR NS 215, people's counsel and the city of Baltimore offered evidence of tax savings, which would result from a hypothetical capital structure, which contained 55 per cent equity and 45 per cent debt. It is true that this Commission gave some effect to this hypothetical tax saving in fixing the rate of return. It is likewise true, however, that the effect given was not the full amount of such alleged tax saving because of the hypothetical nature of the amount of such savings.

In this case, however, the tax savings are definite and actual. They result from the fact that, whereas the A. T. & T. receives all of the net revenues of the C. & P., by way of dividends, it pays no tax on the dividends. The only tax that is paid is the one accruing on the net revenues of the C. & P. Company plus an additional 2 per cent for the consolidated return. Some part of the tax saving resulting to the A. T. & T., because of this elim-

ination of tax, is justly due to the C. & P. Company and in turn to its customers. I agree with the majority, that this Commission cannot compel the A. T. & T. to pay C. & P. part of these tax savings. However, in considering what relief should be granted to the C. & P. Company, we are, in fact, seeking to establish a fair return to its sole stockholder, the A. T. & T. If the parent company refuses to give its subsidiary any part of the benefits which it receives by virtue of a consolidated return, it would be entirely proper for this Commission to fix such a rate of return to the subsidiary as would withhold from the parent the full benefit of a return on its stock to which it would otherwise be entitled. This, we are not doing. The least, therefore, that we can and should do is keep the rate of return as close to the lowest figure which we have heretofore found reasonable, viz.—5.75 per cent.

4. The American Telephone and Telegraph is constantly diluting the equity of its shares by issuing convertible bonds into common stock to such an extent that there are now outstanding 38,987,054, $100 par value, common shares. This is a tremendous increase—over 50 per cent—from the 25,261,183 outstanding at the end of 1949, and yet the company expects to maintain the $9 dividend on a permanent basis. This can only be done by constant needling of subsidiary corporations such as the Chesapeake and Potomac and their affiliates who, in turn, are to seek from the regulatory bodies increases commensurate with wage increases and capital outlay. It is still my opinion that if the Chesapeake and Potomac Telephone Company were to issue bonds and borrow money from the public, thus obtaining capital which allows interest deduction of 100 per cent, the customers in Maryland would benefit greatly with a lower cost of capital—"Economy of capital is as essential as economy of operations."

5. There must be a discretionary limit of time by which the Commission, although required by law to make a just and fair return on this capital structure, takes into account the efficiency of operation of new material which requires more time to realize its effectiveness. If this new material is 20 to 30 per cent more expensive yet is 40 to 50 per cent more economical, the customer should be given the benefit of this efficiency with at least a delay in rate change by the Commission to prove its effectiveness.

It is my opinion that this new, modern equipment, which has greatly increased the efficiency of operation of the company, will produce a much larger amount of revenue than the majority claims and will, in fact, if their opinion holds, produce more than the 6 per cent which we have set as a maximum. I wish to stress again that this is not a permanent case and that we are fully complying with the law if we allow an amount which will produce at least 5¾ per cent which we all consider fair and equitable. If, after nine months, the Commission finds that there has not been this gradual increase in earnings which has prevailed during 1952, we could make proper adjustments in permanent rates. However, since the 10-cent coin box has been allowed by this Commission last March, producing

about a million dollars annually, and despite a wage increase of $2,400,000, the company has shown a general increase in earnings over 1951. There have been 51,000 additional telephones installed and more awaiting installation, which will further increase the earnings for the company. The modern equipment of dial telephones, which are now in use by about 75 per cent of the customers in Maryland, is working toward a relatively lower operating cost each month, eliminating much of the labor problem. This should be a saving to the customer who should not be compelled to pay additional premiums for its use with a larger rate increase than is absolutely necessary.

ORDER

In accordance with the opinion of the Commission filed herein on the date hereof, which opinion is hereby referred to and made a part hereof,

It is, this 23rd day of January, in the year Nineteen Hundred and Fifty-three, by the Public Service Commission of Maryland,

Ordered: (1) That The Chesapeake and Potomac Telephone Company of Baltimore City be, and it hereby is, authorized, empowered, and permitted to put into effect a schedule of temporary rates for the rendition of telephone service within the state of Maryland as set forth and described in "company Exhibit A" filed with the application in this proceeding, to be effective on successive billing dates beginning not earlier than February 1, 1953, such schedules of temporary rates to remain in effect until the permanent rates of the said company are prescribed or approved by this Commission in the pending proceedings but which temporary rates shall, in no event, remain in effect for a period longer than nine months, unless such period shall hereafter be extended by order of the Commission for a further period not to exceed three months.

(2) That the collection of the temporary rates herein approved is conditioned upon The Chesapeake and Potomac Telephone Company of Baltimore City entering into bond in the principal amount of $1,350,000 with such security as the Commission shall approve, payable to the state of Maryland and conditioned to insure prompt refund by the said company to those entitled thereto, of all amounts which the said company shall collect or receive in excess of such rates and charges as may be finally fixed and determined by the further order of this Commission entered herein.

(3) That The Chesapeake and Potomac Telephone Company of Baltimore City shall file with this Commission as promptly as possible tariffs setting forth therein the schedule of temporary rates referred to and described in the aforementioned "company Exhibit A."

(4) That except as modified or changed as provided in said "company Exhibit A," the rates and charges for telephone service furnished in the state of Maryland by The Chesapeake and Potomac Telephone Company of Baltimore City in effect on the date hereof be, and they are hereby, declared to be the just and reasonable rates and charges for the said company during the period this order remains in effect.

(5) That The Chesapeake and Potomac Telephone Company of Baltimore City shall furnish this Commission accurate and complete statements under oath, and in convenient form, setting forth the revenues, operating expenses, and other expenditures of the company during each month; such reports to be furnished as soon as may be reasonably practicable and convenient after the end of each calendar month during the period this order remains effective.

(6) That for the purpose of the matter of the determination of the permanent rates to be charged by The Chesapeake and Potomac Telephone Company of Baltimore City for telephone service furnished within the state of Maryland this proceeding be, and it hereby is, set for further hearing at the office of the Commission, Baltimore, Maryland, on a date to be hereafter fixed by the Commission.

(7) That a copy of this order be served upon the said The Chesapeake and Potomac Telephone Company of Baltimore City, and that the said company within five days of the date of service of such copy shall notify the Commission in writing whether or not it will accept and abide by the same.

KENTUCKY PUBLIC SERVICE COMMISSION

Re Kentucky Telephone Corporation (Now General Telephone Company of Kentucky)

Case No. 2435
December 11, 1952

APPLICATION *by telephone company for an adjustment of rates; granted.*

Valuation, § 36 — Net investment rate base.

1. The average net investment rate base of a telephone company was considered the best test of the reasonableness of the company's rates, p. 107.

Valuation, § 299.1 — Working capital — Taxes.

2. No allowance for working capital was made to a telephone company which received revenues for exchange service at least partially in advance and had tax accruals for Federal and state taxes in excess of its cash requirements, p. 107.

Revenues, § 10 — Interest during construction.

3. An amount representing interest during construction was directed to be added to the revenues of a telephone company, inasmuch as construction work in progress had been included in the company's rate base, since, if this were not done, the company would receive a duplicate return, p. 107.

Depreciation, § 16 — Basis — New construction — Telephone company.

4. No increase in a telephone company's depreciation account was allowed for construction work in progress, which would soon be completed and become a part of the company's plant in service, where the company made no estimate as to the plant that would be replaced or the additional revenues which would be realized because of the new plant, p. 108.

Return, § 111 — Telephones.

5. Telephone rates were increased so as to provide additional gross revenues in such an amount as to enable the company to pay operating expenses, interest on borrowed money, and obligations to stockholders and to attract capital necessary to provide adequate service and to extend needed service, p. 108.

APPEARANCES: For the applicant: John Robert Jones, Attorney at Law, Power, Griffith and Jones, Columbus, Ohio, and Louis Cox, Attorney at Law, Hazelrigg & Cox, Frankfort.

For the Protestants: Arthur T. Bryson, Assistant Corporation Counsel, city of Ashland, Ashland; Thomas E. Phipps, City Attorney, Catlettsburg; Chesley A. Lycan, City Attorney, Russell; James M. Honaker, Special Counsel, for city of Lexington, the county of Fayette, and the city of Owingsville; Foster Ockerman, Corporation Counsel, city of Lexington, Lexington; Scott Reed, County Attorney, Fayette county, Lexington; Otis C. Thomas, city of Liberty; D. L. Thornton, representing city of Midway and Woodford county, Kentucky.

For the Commission: J. Gardner Ashcraft, Assistant Attorney General.

By the COMMISSION: On June 25, 1952, Kentucky Telephone Corporation (now General Telephone Company of Kentucky) filed with this Commission a notice whereby it proposed to adjust its rates for local service within the state of Kentucky, effective on and after July 21, 1952. The Commission on the 15th day of July, 1952, suspended the proposed rates of applicant for a period of five months. Hearings were held on the application and protests starting on the 5th day of August, 1952, and concluded on the 18th day of October, 1952.

General Statement

Kentucky Telephone Corporation (now General Telephone Company of Kentucky), a Delaware corporation, is a subsidiary of the General Telephone Corporation and furnishes telephone service to the following exchanges in the commonwealth of Kentucky: Ashland, Berea, Bryantsville, Catlettsburg, Flemingsburg, Grayson, Greenup, Hazard, Lancaster, Lexington, Liberty, Midway, Morehead, Nicholasville, Olive Hill, Owingsville, Paint Lick, Poplar Plains, Russell, Sharpsburg, Vanceburg, Versailles, and Wilmore.

The General Telephone Corporation (applicant's parent company) is a holding company owning practically all of the common stock of its subsidiaries which includes a directory publishing company, a service and advisory company, a telephone manufacturing company, a telephone equipment and sales distributing company, and

several operating telephone companies serving in excess of one million subscribers in some eighteen states.

In addition to owning the equity securities of these companies, General also provides certain debt moneys to its subsidiaries.

Rate Base

[1] The applicant introduced in evidence the net book cost of its properties at June 30, 1952, consisting of the following:

Telephone Plant in Service	$11,874,699
Telephone Plant under Construction	717,654
Telephone Plant Acquisition Adjustment	864,069
Total Telephone Plant	$13,456,422
Less—Depreciation Reserve	1,855,512
Net Telephone Plant in Service	$11,600,910
Material and Supplies	368,265
Working Cash	205,861
Total	$12,175,036

The company also introduced evidence as to its capitalization at June 30, 1952, consisting of the following:

Notes Payable to Banks	$200,000
Notes Payable to Parent Company	2,245,750
First Mortgage Bonds	5,300,000
Preferred Stock	800,000
Common Stock	3,637,000
Capital Surplus	63,723
Earned Surplus	313,439
Total	$12,559,912

The Commission has also given due consideration to this rate base.

In order to test the reasonableness of the rates sought by applicant, the Commission is of the opinion that the average net investment rate base provides the most reasonable test and has taken from the record an average of monthly averages of the following items for the twelve months ending June 30, 1952:

Telephone Plant in Service	$11,543,072
Telephone Plant Acquisition Adjustment	880,111
Construction Work in Progress	436,920
Prepayments	40,777
Materials and Supplies	453,632
Less—Reserve for Depreciation	1,705,361
Net Average Investment	$11,649,151

[2] Inasmuch as the applicant's revenues for exchange service are received at least partially in advance and applicant has tax accruals for Federal and state taxes in excess of the cash working capital requirements of the company, the Commission has made no allowances for working cash in this case.

Operating Revenues and Expenses

[3] For the twelve months ended June 30, 1952, the company had total operating revenues in the amount of $4,020,132. To this amount the Commission is of the opinion that an amount of $16,848 should be added representing interest during construction. Inasmuch as construction work in progress has been included in the rate base, it is necessary to add the interest during construction to prevent a duplicate return.

From these revenues it is necessary to deduct an amount of $18,200 which represents toll revenues which the company collected during part of the test period but will not collect in the future. After consideration of these two items, the total adjusted operating revenues for the period would be $4,018,780.

For the year ended June 30, 1952, the total operating expenses were $3,343,674. However, the record dis-

closes that the company will incur certain additional operating expenses in the future that it did not incur during the test period. The company has granted certain wage increases of which $157,200 on an annual basis was not reflected in the test period. These additional wages have brought about added pension costs of $9,200 which the company will also incur in the future.

The record also discloses that the applicant's operating expenses will be increased by $37,300 by increases in local and other taxes.

In Cases Nos. 2150 and 2169 (1951) 90 PUR NS 16, 91 PUR NS 507, the applicant was ordered to amortize the costs in connection with those cases over a period of three years, and the operation for the test period included part of these costs. The company has incurred expenses of some $25,000 in connection with this case which the company should amortize over a similar period. It appears from the record that the operating expenses of the company were charged with an amount which was $5,051 in excess of the amortization amount allowed by the Commission in Cases Nos 2150 and 2169, *supra*. Therefore, the operating expenses for rate case costs in this Case No. 2435 need be increased only $3,283 to provide for the amortization over a similar period of the estimated $25,000 cost of presenting this case.

The record discloses that in connection with certain toll refunds heretofore mentioned, there was an amount of $2,400 included in operating expenses for the cost of the toll refund which will be nonrecurring. The Commission, therefore, will adjust operating expenses for the test period in this amount.

In Case No. 2150, *supra*, the Commission ordered the company to amortize the total estimated cost of an original cost study of the Ashland Home Telephone Company over a period of seven years or $10,143 per year. During the test period there was reflected in operating expenses $11,386 of this expense; therefore, a downward adjustment to operating expenses of $1,243 is necessary.

These additional operating expenses, when offset by the downward adjustment, would amount to $203,340. The company has claimed additional depreciation expense of $11,770 based on depreciable account balances as of June 30, 1952. However, inasmuch as the Commission has used the average of these accounts, the actual depreciation charged during the test period will be used.

[4] The company further contends that its depreciation expense would be increased by $26,330 for construction work in progress which will be completed and become a part of the Plant in Service; however, the company makes no estimate concerning the plant that may be replaced or the additional revenues that may be realized because of this new plant. The Commission will not use this amount to test the reasonableness of the rates sought.

Return

[5] Having considered the original cost, the net investment, the capital structure, and other elements of value recognized by the law of the land for rate-making purposes and having also considered the adjustments to operat-

ing revenues and expenses heretofore mentioned, the Commission is of the opinion that additional gross revenues in the amount of $233,562 will enable the company to pay its operating expenses, interest on borrowed money, its obligations to its stockholders, and attract the capital necessary to provide adequate telephone service to all of its subscribers and to extend much needed service to additional applicants in the area which it serves.

An Order will be drawn in conformity with this Opinion.

MISSOURI PUBLIC SERVICE COMMISSION

Re Steelville Telephone Company et al

Case No. 12,408
December 10, 1952

APPLICATION *for authority to sell telephone properties to company purporting to be co-operative telephone association; granted.*

Public utilities, § 58 — What constitutes — Co-operative telephone association.

A telephone company organized under the General and Business Corporation Act to acquire and operate existing telephone facilities, but purporting to be a co-operative association, is a "telephone corporation" furnishing service "for hire" subject to the Commission's jurisdiction, whether or not it expects to make a profit, where it will continue to serve existing subscribers without requiring them to purchase stock but will require new customers to purchase stock, where it is ready to furnish service to all requesting it, and where, although its articles do not provide for dividend payments, its stockholders will own the plant and thus achieve a profit when the company's indebtedness is discharged, it being considered significant that the company was organized under the General and Business Corporation Act.

APPEARANCES: G. C. Beckham, for Steelville Telephone Exchange, Inc.; John Mohler, for Southwestern Bell Telephone Company; R. W. Hedrick, Sr., for the Missouri Telephone Association; Thomas A. Johnson, for the Commission; Homer Thorp, Chief Accountant, and R. E. Duffy, Chief Engineer.

By the COMMISSION: This case comes before the Commission upon the joint application of Steelville Telephone Company, hereinafter referred to as seller, and Steelville Telephone Exchange, Inc., hereinafter referred to as buyer. Authority is sought for transfer of the telephone system owned and operated by seller to the newly organized company, the buyer, such system being located in the city of Steelville, Crawford county, Missouri.

The hearing on the application was held before the Commission in Jefferson City, Missouri, on September 30, 1952, at which time and place all interested parties of record were given the opportunity to be heard. The seller was not represented by counsel but appeared by its president. Other appearances were as noted above.

The evidence submitted shows that the seller was incorporated in Missouri in about 1903, and since that time engaged in the operation of a telephone system at Steelville, Missouri. The last twenty years have been under the present management. At this time the system includes central office equipment, the building in which such is located, a switchboard, cables, wires, lines, and poles, and about 335 telephone instruments in service. There are about 310 customers in the town of Steelville, with about 10 extension instruments among those, and about 15 customers on short lines near the edge of the town. In addition, seller serves about 14 switcher lines on which there are about 80 stations, all wholly owned and maintained by the parties on those lines, with seller owning and maintaining only such portion of the switcher lines located in the city of Steelville. None of the system is new, much equipment is old, and there are many complaints as to poor service. The manager of seller is advancing in years and finds the work and responsibility of operation a burden.

According to the book value of the system, as shown by seller's annual reports filed with the Commission, the real estate is valued at $2,000 and the plant and equipment at $4,762, as of December 31, 1951. The president of seller testified the entire system was reasonably worth the selling price of $20,000 in cash.

Certificate of incorporation was issued to buyer on May 6, 1952. Under the terms of its Articles of Incorporation, including the amendment filed with the secretary of state October 9, 1952, buyer is organized under Chap 351, Rev Stat Mo 1949, the General and Business Corporation Act of Missouri. It purports to be a cooperative. Its Articles, as amended, do not provide for any dividend payments to stockholders. Receipts in excess of operating costs are to be set up as capital credits to the account of its members. It proposes to expand the area of operation, build new lines extensively, reconstruct the property in Steelville and install a modern dial system. To finance such program it has obtained a commitment from the Rural Electrification Administration for a loan of $503,000. It will continue to serve present subscribers in Steelville without requiring them to purchase stock. All other subscribers are required to become members by the purchase of one share of common stock at a cost of $10. Such members may, in addition, purchase preferred stock at $40 per share. It anticipates a total of about 614 subscribers ready for service as soon as construction can be made, and around 970 subscribers by the end of five years after construction.

The evidence further shows that the buyer will stand ready to offer service generally to anyone in the area who requests it, that it expects to provide long distance toll service through a connection with Southwestern Bell Telephone Company, charge the

standard long-distance toll rates, and will provide public pay telephones. The buyer expects to charge its subscribers rates which will produce enough revenue to repay the $503,000 loan in thirty-five years, at which time the stockholders will own the system.

The territory which the buyer seeks to serve is shown to overlap slightly some portions of the service area of adjoining telephone systems, being the Cuba Telephone Company, the St. James Telephone Company, and the Potosi Telephone Company. We believe that such overlapping territory should be eliminated from buyer's territory.

Under these facts we conclude that a sale and transfer of the telephone system owned and operated by the Steelville Telephone Company to the Steelville Telephone Exchange, Inc., would be in the best interests of the present subscribers of seller and of the potential telephone subscribers in the area which buyer seeks to serve. We have carefully considered the co-operative features of the buyer company, the evidence submitted as to the services it proposes to render, and the decisions cited by counsel in briefs submitted, and it is the view of the Commission that buyer is a "telephone corporation" as defined in § 386.020, Rev Stat Mo 1949, and as such is subject to the jurisdiction of this Commission. We believe its services are "for hire," whether or not it expects to make a profit. Even though dividends are never paid, when the company's indebtedness is discharged the stockholders will own the plant and will thereby achieve a profit. As was stated in the Farmer's Mutual Telephone Co. Case (1935) 8 PUR NS 260, it is significant that the company is organized under the General and Business Corporation Act of Missouri.

NORTH CAROLINA UTILITIES COMMISSION

Ex Parte Carolina Power & Light Company

Docket No. E-2, Sub 29
January 26, 1953

APPLICATION *by power company for approval of procedures with respect to accounting for emergency facilities; procedures prescribed.*

Accounting, § 28 — Depreciation — Emergency defense facilities — Rapid amortization.

1. A power company which had obtained certificates from the Internal Revenue Bureau permitting the rapid amortization of emergency defense facilities was authorized to provide on its books of account for depreciation on defense properties at rates consistent with those for nondefense properties, and during the period of amortization of such emergency facilities

to charge to the current provision for Federal taxes on income in operating expenses a subdivision of Account 507, Taxes, and concurrently credit "Earned Surplus Restricted for Future Federal Taxes on Income," amounts equal to the reduction in Federal taxes on income resulting from the accelerated program, and after expiration of the effective amortization period, and until "Earned Surplus Restricted for Future Federal Taxes on Income" applicable to specific facilities is exhausted or such facilities are retired from service, to charge "Earned Surplus Restricted for Future Federal Taxes on Income" and credit the current provision for Federal taxes on income with amounts equal to the increase in Federal taxes resulting from the unavailability for tax purposes of further depreciation on emergency facilities, p. 112.

Accounting, § 28 — Rapid amortization — Defense facilities — Discontinuance of program.

2. A power company which had requested and received instructions as to the proper method of accounting for the rapid amortization of emergency defense facilities was authorized to abandon the short-term depreciation permitted by the Internal Revenue Code prior to completion of full amortization at any time that it desired and to exclude for tax purposes the amounts allowable under the short-term depreciation and return to the normal depreciation allowable for tax purposes on nondefense facilities, p. 112.

By the COMMISSION:

[1, 2] On the 23rd day of January, 1953, Carolina Power & Light Company (hereinafter sometimes referred to as the "company") filed with the Commission its application for approval of procedures with respect to accounting for emergency facilities and the Federal income tax results of amortization of emergency facilities pursuant to provisions of § 124A of the Internal Revenue Code, 26 USCA § 124A.

Upon motion of counsel for the company, the application was filed and docketed and an immediate hearing was held by the Commission on the application and the statements and representations of the company's officials.

This Commission having given full consideration to the matter of accounting procedures to be followed by the company in amortizing for Federal income tax purposes over a period of sixty months that portion of the cost attributable to defense purposes, in accordance with the provisions of said § 124A of the Internal Revenue Code, finds:

1. That the company is a public utility engaged in the generation, transmission, delivery, and sale of electricity to the public for compensation, and is subject to the jurisdiction of this Commission with respect to rates, services, and accounting procedures;

2. That the company holds necessity certificates under § 124A of the Internal Revenue Code and may hereafter apply for such certificates with respect to emergency facilities hereafter constructed in the interest of national defense and attributable to defense purposes; that the costs of that portion of the emergency facilities attributable to defense purposes under necessity certificates, which are now held by company, aggregate approximately $16,420,900;

3. That such necessity certificates

constitute authority to amortize for Federal income tax purposes over a period of sixty months that portion of the cost of such facilities attributable to defense purposes; and

4. That the purpose of the special rapid amortization of the cost of emergency defense facilities is not to create additional income for company, but simply to defer Federal taxes on income.

The Commission being of the opinion that said application should be granted:

It is hereby *ordered, adjudged* and *decreed:*

That Carolina Power & Light Company be, and it is hereby, permitted and authorized to:

1. Amortize for Federal income tax purposes over a period of sixty months that portion of the cost of such facilities attributable to defense purposes;

2. Provide on its books of account for depreciation on properties covered by necessity certificates at rates consistent with those for like property not covered by necessity certificates and, during the period of amortization of such emergency facilities, charge to the current provision for Federal taxes on income in operating expenses and concurrently credit "Earned Surplus Restricted for Future Federal Taxes on Income," amounts equal to the reduction in Federal Taxes on Income resulting from the accelerated amortization of such facilities for Federal income tax purposes and after expiration of the effective amortization period, and until "Earned Surplus Restricted for Future Federal Taxes on Income" applicable to specific facilities is exhausted or such facilities are retired from service, charge "Earned Surplus Restricted for Future Federal Taxes on Income" and credit the current provision for Federal Taxes on Income with amounts equal to the increase in Federal Taxes on Income resulting from depreciation on the emergency facilities no longer being available for Federal income tax purposes, said charges and credits to the current provision for Federal Taxes on Income in operating expenses shall be made to a subdivision of Account 507, Taxes;

3. Follow the same procedures as are authorized in this proceeding with respect to any facilities hereafter constructed in the interest of national defense and attributable to defense purposes for which certificates of necessity may be issued to company under authority of § 124A of the Internal Revenue Code; and

4. Elect under the provisions of said § 124A of the Internal Revenue Code at any time prior to completion of full amortization, to discontinue such amortization, exclude for Federal income tax purposes the amounts allowable under the necessity certificates, and return to normal depreciation allowable for Federal income tax purposes.

Re Mountain States Telephone & Telegraph Company

Docket No. 9222
January 12, 1953

APPLICATION *by telephone company for authority to increase rates; granted.*

Revenues, § 2 — Estimates for the future.

1. The revenue requirements for a telephone utility were computed on the basis of one year's operation projected into the future, p. 116.

Valuation, § 36 — Net investment — Change in rate base formula — Adjustments in revenue requirements.

2. The finding of a Commission in an earlier telephone rate proceeding that it would be advisable to use an average net investment rate base was not changed when the Commission, in considering a subsequent application by the same utility for further increase in rates, determined that the matter of the company's revenue requirements could best be adjusted by changing the rate of return rather than the rate base, p. 117.

Valuation, § 10 — Commission authority.

3. The Commission, in providing for a telephone utility's additional revenue requirements by adjusting the rate of return rather than changing the formula for establishing a rate base, is acting within its legislative and discretionary authority, p. 117.

Valuation, § 36 — Original cost or present fair value.

4. Original cost, or net investment, was found to provide a more satisfactory rate base for a telephone company than present fair value developed from reproduction cost or average book investment, p. 117.

Valuation, § 224 — Construction work in progress — Interest.

5. Construction work in progress was allowed as part of a telephone company's rate base where the company credited interest during construction to operating income, p. 118.

Expenses, § 85 — Payments to affiliated supplier for equipment.

6. Payments made by a telephone company to an affiliated supplier for equipment were considered proper operating expenses where the amounts paid to the supplier were generally lower than amounts which the company would have been required to pay for similar equipment from other suppliers, and where the average earnings of the affiliate had not reached unreasonable proportions for a manufacturing company when compared with earnings of nonrelated manufacturing companies, p. 118.

Revenues, § 2 — Estimates for the future.

7. A telephone company's estimate of future revenues was accepted where

no evidence was introduced in the record controverting the amounts submitted by the company for consideration, where in the past the Commission had adopted the company's estimates and in retrospect appeared to be justified in so doing, and where the company had projected its estimates into the future upon the basis of the present scale of wages, taxes, and prices and reflected fully the result of a newly installed dial operation, p. 119.

Expenses, § 87 — License contract payments.

8. Payments made by an operating telephone company to its parent of one per cent gross revenues for valuable technical, legal, and administrative assistance provided by the parent were allowed as operating expenses, p. 119.

Return, § 111 — Telephones.

9. Telephone earnings amounting to approximately 3.88 per cent on an average net investment rate base were found to be unreasonably low, p. 120.

Return, § 111 — Telephone company.

10. The Commission, in considering the rate of return to be allowed in a telephone rate proceeding, gave consideration to the requirements for cost of debt capital and allowance for return on equity capital and concluded that a return of 6.89 per cent on the average net investment rate base for the current year was reasonable, p. 120.

Return, § 26 — Cost of capital — Debt ratio.

11. A hypothetical capital structure consisting of 38 per cent debt and 62 per cent equity capital was recommended for consideration by the Commission as part of its determination of a telephone company's earnings requirement, p. 121.

Return, § 27 — Dividend and interest requirements — Surplus.

12. Earnings were authorized for a telephone utility which would be sufficient to service the company's debt, pay reasonable dividends, and provide a reasonable amount for surplus, p. 121.

Rates, § 565 — Telephone pay station charge.

13. A telephone company was authorized to increase the rates for local messages at pay stations from 5 to 10 cents as soon as facilities could be made available, p. 121.

By the COMMISSION: On July 18, 1952, The Mountain States Telephone and Telegraph Company filed an application seeking a general increase in rates for telephone service rendered by it in the state of Wyoming. On the same day we entered an order setting the matter for hearing on August 19, 1952, at the Commission hearing room, Supreme Court and State Library building, Cheyenne, Wyoming. Said order provided for the publication of notice of the hearing in the county seat of each county in which the company operates, and further provided for notice by mail to the governing officials of each unincorporated and incorporated city, town, village, or community in Wyoming. It appears that said requirements for notice were fully complied with by applicant.

Pursuant to said order, the matter came on regularly for hearing commencing at the time and place aforesaid, and continued through August 22, 1952. Upon request of the prot-

estants, the hearing was adjourned to September 2, 1952, and on said date another adjournment was taken until November 3, 1952. On November 3, 1952, the hearing was resumed and continued through November 6, 1952, with two night sessions. Upon conclusion of the hearing, the record was closed and the matter taken under advisement.

APPEARANCES: For applicant: J. H. Shepherd and Norman B. Gray, Attorneys at Law, Cheyenne.

For protestants: A. J. Williams and J. A. Greenwood, of the law firm of Greenwood, Ferrall and Williams, Cheyenne, appearing for the cities of Sheridan, Rock Springs, Rawlins, Cody, Cheyenne and Casper; and the town of Wheatland.

For interveners: Alfred M. Pence, City Attorney, Laramie, appearing for city of Laramie; Cecil Price and Warrant Officer, T. L. Lucas, Cheyenne, appearing for Orchard Valley Association; and G. R. McConnell, Laramie, appearing for himself.

Statement

In disposing of this matter we desire to state, at the outset, that both the applicant and the protestants, by the evidence adduced through their recognized experts in this particular field, have been of immeasurable aid and assistance in guiding the Commission to reach what we believe to be a just and equitable result—fair to the customer and to the applicant.

We have before us some 1,348 pages of oral testimony, together with some 54 exhibits, some of it conflicting as to concepts of approach to the problem, but all of it expertly dealing with rate-making matters. If it were thought necessary, the Commission could extend this order, page upon page, discussing such evidence, but that, it seems, would serve no useful purpose under the circumstances here prevailing.

We have rather recently—February 24, 1951, in Docket 9172, 89 PUR NS 341—reviewed the revenue requirements of applicant and, in the opinion handed down in that matter, we made quite clear our concept of the views which we feel should be taken in these times of unstable forces that drive with telling impact upon rates established under formulae that assume static conditions. To better understand what we do here, we would recommend to those interested a reading, or re-reading, of our opinion in that proceeding.

Suffice it to say that we have fully reviewed and carefully considered the evidence in this cause and it is still readily apparent that the unstabilizing influences present in the year 1950 are not diminished to any extent and the problem here—as we view it—is not in the main a change of approach but the consideration of a later period of time and the effect thereof upon applicant's operating conditions, investment, revenues, expenses, and earnings. These matters will be ruled upon herein in the light of the evidence adduced.

Test Period

[1] Probably the test period to be adopted as a base upon which to reach a conclusion of the earnings requirments of applicant is one of the most important single factors to be considered in this proceeding. The period of inflation that has existed—and con-

tinues to exist—since World War II, is largely responsible for the emphasis that must be laid upon this factor.

It must be realized that the rates here fixed operate prospectively and will not be placed into effect before the year 1953. To predicate rates upon assumed facts which give no weight to conditions mentioned that affect the operations of applicant in the year 1953 is a matter of serious concern, not only to the applicant but to regulatory Commissions as well.

In this proceeding there is contrary contention between the applicant and the protestants as to the test period to be utilized by the Commission in reaching a determination of applicant's earnings requirements.

The applicant contends that it is reasonable and proper for the Commission, in fixing rates applying in the future, to test such rates against the investment, revenues, and expenses as the same can best be estimated for the immediate future. The applicant has produced evidence based upon a test period for the year 1953.

The protestants, on the other hand, contend that such a projection into the year 1953 is fundamentally wrong; that it is proper only to use a test period already concluded and they have introduced evidence utilizing June 30, 1952, as the end of a twelve months' test period.

We have consistently dealt with the revenue requirements of this company on the basis of one year projected in the future. We think such treatment should be accorded in the disposition of this case and, accordingly, the computations herein contained will all be based on the average investment, revenues, and expenses as projected in the evidence for the period 1953. The rates allowed by this order will be put into effect during the early part of said period.

Rate Base

[**2–4**] In connection with the hearing in the previous case (Docket No. 9172, *supra*), we received extensive testimony and heard considerable argument as to what should be a proper rate base. After giving the matter serious consideration and full discussion in our order of February 24, 1951, *supra,* we there concluded that it would be advisable to use an average net investment rate base which is the company's actual investment in plant facilities after deducting the average depreciation reserve, but including plant under construction (which we will discuss in more detail later), materials and supplies, and working capital. We further thought then, and we think now, that the matter of the company's revenue requirements can best be adjusted by changing the rate of return from time to time as need be, rather than changing the formula for establishing a rate base. In so doing we are acting within what we conceive to be our legislative and discretionary authority in utility regulation.

It does not seem necessary to reiterate here the various considerations which lead to this conclusion. We are cognizant of the fact that the company still contends we should adopt a rate base giving some recognition to the present value or the fair value of the property on the basis of prices as they exist today. It introduced in evidence an engineering study designed to develop the present value of the property for the year 1953. We have given con-

sideration to such evidence but, in the final analysis, we continue to adhere to the findings and conclusions developed in the February 24, 1951, order, for the reasons stated therein.

[5] It is mentioned above that an allowance herein has been made for "construction work in progress." The sum of $206,000 is the applicant's estimate for this item for the year 1953.

Considerable attention has been given to this factor in the record by the parties and, while the witness Knapp has stated that it is common practice to exclude such item from a rate base, he has recognized that in the present period of high construction activity it is reasonable to include such item to offset, to some extent, the matter of attrition in the company's earnings. It is recognized that attrition results in a consequent lowering of the rate of return and he contends that by the allowance the applicant will be afforded some measure of protection. It appears that the attrition to which the witness refers is that the increased cost per unit of plant facilities added for expansion or replacement is greatly in excess of the cost of similar units of plant facilities previously placed in service at lower prices. As a consequence, the average plant investment per telephone station has substantially increased from year to year.

The witness Knapp, of course, attached a qualification to the allowance in that if such item is included in the rate base the related interest during construction must also be included as an addition to revenues in computing the net operating earnings. In this connection, applicant has submitted its studies on such a basis and has credited to operating income interest during construction.

We have concluded here that allowance of the item might be considered somewhat liberal but, on the other hand, entirely reasonable. At the time of the hearing there was a substantial sum on the books of the company for this item. As of April 1, 1952, the total was $1,049,521; however, of such amount $858,425 represented in a large measure plant which had already been installed at Casper, Wyoming, for conversion from manual to dial. We now know that such plant is already in service. Eliminating Casper from the total above indicated, it would appear that the sum of $206,000 is a reasonable allowance under present operations of the applicant. Inasmuch as applicant has reflected the credit for interest during construction, we have, in conformity with our past practice, allowed the item in full.

Western Electric Prices

[6] In connection with the matter of the rate base, some mention should also be made of the cost of plant materials included therein. The applicant, as is well known, is a part of the Bell System and has intercorporate relations with the Western Electric Company, Inc. It is the practice of applicant to purchase practically all of its telephone apparatus and equipment and outside plant material from Western Electric. By reason of applicant's relation with Western, it is necessary to consider whether or not the prices paid by applicant are reasonable, having regard for the earnings of Western Electric. As a part of its case, applicant introduced evidence to show that the amounts paid by it to Western for such

materials were generally lower than amounts it would be required to pay elsewhere and also that the average earnings of Western Electric (7.9 per cent on its net investment) have not reached unreasonable proportions for a manufacturing company when compared with earnings of nonrelated manufacturing companies.

It would seem that applicant, with respect to this matter, has sustained its burden of showing that the material prices are reasonable and, for purposes here, those prices have been accepted.

In reaching this conclusion we are supported by reports from the Special Committee of NARUC co-operating with the FCC, which has made, and is continuing to make, studies of this operation.

Revenue and Expenses

[7] In considering the anticipated operating results which might be achieved by applicant under the rates here to be fixed, it is necessary to deal with the revenues, operating expenses, and taxes of the applicant. We have heretofore indicated the test period which we have adopted for purposes here and it is, therefore, necessary to test the reasonableness of the estimates furnished by applicant of the foregoing items for the year 1953.

There is no evidence of record controverting the dollar amounts which have been submitted for consideration. In the past we have adopted and relied upon estimates of applicant for the several items of operating revenues, operating expenses, and taxes and the record here indicates the justification of so doing. The witness Ackerman pointed out, by reference to Exhibit No. 14, that without the wage increase of June, 1951, which could not be foreseen at the time of the last case, and the increase in Federal income taxes, the estimates of the 1950 case were substantially borne out by actual operations of the company in the year 1951.

An additional factor which influences the Commission in adopting the estimates for the year 1953 is that such estimates have been projected into the future upon the basis of the present scale of wages, taxes, and prices and furthermore reflect the results of dial operation in Casper for the full period.

License Contract

[8] In connection with operating expenses herein allowed, there is included an item of operating expense incurred by applicant under its license contract with its parent company, American Telephone and Telegraph Company. Applicant has offered evidence relating to the propriety of the charge. Under the agreement with the parent company, applicant receives benefits from the American Company, through Bell Laboratories, in research, investigation, and experimentation in the art and science of telephony. It also receives, through the general department of the American Company, advice and assistance in construction and maintenance of plant and handling of traffic; in accounting principles and methods, as well as tax matters; personnel training, and advice and assistance in financial and legal matters.

The cost of such services to applicant is based on a charge of one per cent of the company's local and long-distance toll service revenues. The evidence demonstrates rather clearly that the foregoing services rendered by the

parent company to applicant are of substantial value and assistance to it in its operations and the payment therefor appears reasonable.

Earnings on Present Rates and on Proposed Rates

[9] Applicant, through the witness Ackerman, introduced into evidence certain exhibits reflecting the operating results actually experienced in the year 1951 and as estimated for the year 1953 under the rates now in effect. From these exhibits it is developed that on an average net investment rate base, applicant for the year 1951 realized a net operating earning of 5.36 per cent, which is substantially less than the amount previously authorized. For the year 1953 it is estimated that the net operating earnings of applicant will be 3.8 per cent which, after correction for reduction in prices paid for equipment, increases slightly to 3.88 per cent.

It should be noted that witness Knapp found the net operating earnings of the company for the twelve months' period ending June 30, 1952, adjusted to the current level of wages and taxes, to be 3.81 per cent.

It would seem that the record discloses beyond doubt that present earnings of the applicant are unreasonably low and that additional revenues are needed by applicant at this time.

Here, again, there is no real controversy between the parties as to the need for additional revenue but the controversy concerns itself with the amount of revenue that is to be provided.

Applicant attached proposed rate schedules to its application which were designed to produce additional gross revenues in the sum of $882,000. At the resumption of the hearing on November 3, 1952, the applicant, as a result of an anticipated reduction in prices for equipment during the year 1953, reduced its asking to the sum of $855,000. It is this amount that applicant now seeks.

As contrasted to the amount sought by applicant, the protestants, although conceding that applicant is entitled to increased gross revenues, contend that the Commission should allow, as a maximum, no more than the sum of $551,128, as applied to the volume of business for the year ending June 30, 1952.

As will be developed later herein and in the findings, we conclude that rate schedules designed to produce $855,000 additional gross revenues in the year 1953 will unduly increase the company's earnings and, as will be noted later, we have reduced the allowable additional gross revenue from the $855,000 requested to $710,000. We believe such result is equitable to applicant and its customers.

Rate of Return

[10] The matter of rate of return is always of great significance in rate-making procedures. In this proceeding a large portion of the evidence has been directed to this particular matter. Not less than two-thirds of the entire time of the hearing was consumed by this important subject and the testimony and documentary evidence relating to the matter is voluminous.

The applicant produced evidence through the witness Remington, a financial vice president of the company, and the witness Merrill, a vice president of Standard Research Consultants. Such evidence was aug-

mented by the testimony of the witnesses, Morris and Merrill, in Docket 9172 (1951) 89 PUR NS 341.

The protestants introduced evidence through the witness Knapp, who has had extensive experience in rate case matters before state and Federal Commissions.

The witnesses of the applicant and the witness of the protestants are not in accord as to the percentage figure that might constitute a fair and reasonable rate of return in this proceeding. The evidence shows a variation from the witness Knapp's recommended maximum rate of return of 6.20 per cent to something in excess of 7.50 per cent as recommended by the witness Merrill, and 8.47 per cent as found necessary by the witness Remington. All of these recommendations contemplate a percentage rate of return based on the average net investment during a proper test period. The witnesses, in reaching their conclusions as above stated, have, of course, taken into consideration the cost of debt capital and the cost of equity capital.

The Commission, in considering the rate of return that is to be allowed in this proceeding, has also given consideration to the requirements for cost of debt capital and allowance for return on equity capital, and has concluded that a return of 6.89 per cent on the average net investment rate base for 1953 is reasonable.

[11–13] In arriving at the earnings requirements for 1953, the Commission had before it the total capital allocated to Wyoming intrastate operations as of June 30, 1952, in the amount of $9,520,139 and net investment as of that date of $10,120,097. The average net investment for the year 1953 is shown as $11,199,000, or 110.66 per cent of the June 30, 1952, figure. It is reasonable to conclude that the total allocated capital would increase by this same ratio resulting in an average total capital of $10,534,986 for the year 1953.

After giving consideration to all of the testimony of experts on the subject of debt ratio, we conclude that in determination of earnings requirements in this proceeding, a hypothetical capital structure consisting of 38 per cent debt and 62 per cent equity should be considered.

Under this capital structure the total debt approximates $4,003,295 on which we find an interest rate of 3.45 per cent to be appropriate, resulting in earnings requirements therefor in the amount of $138,113. The book equity would be $6,531,691, which, on the June 30, 1952, book equity per share, would result in the equivalent of 63,346.3 shares. An allowance of earnings at $10 per share produces earnings requirements of $633,463, which together with debt requirements of $138,113 results in total earnings requirements of $771,576 for 1953.

These total earnings requirements of $771,576 indicate a rate of return of 6.89 per cent on the average net investment for 1953 in the amount of $11,199,000.

The net operating earnings for the year 1953 from present rates are shown as $435,000, leaving an earnings deficiency in the amount of $336,576. Gross revenues required to provide these additional earnings after allowance for Federal income taxes,

license contract payments, and uncollectibles, amount to $710,076.

The Commission therefore concludes that additional gross revenues should be allowed to provide $710,000 based upon the year 1953 in order to produce total earnings in the amount of $771,576. These earnings should be sufficient to service the debt, pay reasonable dividends, and provide a reasonable amount for surplus.

Findings:

On the basis of the foregoing, we find that:

1. The Commission has jurisdiction over the intrastate operations of The Mountain States Company in this state, and the matters covered in the company's application in this docket; and that a full and complete hearing has been had on all matters covered by the application.

2. Under the rates presently in effect and prescribed in Docket 9172, *supra*, the applicant's earnings for a considerable period of time have produced a return below the level of a just and reasonable return and to that extent said rates are unjust and unreasonable; that applicant's indicated earnings for the year 1953, under the said rates, would produce even a lower return than is presently realized and such rates would be unjust and unreasonable.

3. The proper period to be used for testing the evidence and the reasonableness of the proposed and allowed rates is the calendar year 1953.

4. The average investment, including an allowance for construction work in progress, materials and supplies, and cash working capital, and after deducting the average depreciation reserve, is $11,199,000 which we find to be a proper rate base.

5. In order to produce a reasonable return on the volume of business anticipated for the year 1953—which we find to be 6.89 per cent—it will be necessary to increase the gross revenues by $710,000. The net operating earnings from these additional revenues after allowance for Federal income taxes, license contract payments, and uncollectibles, together with the net earnings produced by the present rates, will bring the total earnings to a just and reasonable level.

6. That the proposal of applicant to increase the rate for local messages at pay stations from 5 cents to 10 cents is reasonable and proper and said rate shall go into effect as expeditiously as the facilities can be made available.

7. Rate schedules and tariffs designed to produce an additional $710,000 in gross revenue will increase the rates for telephone service to a level no higher than is just and reasonable.

ORDER

It is, therefore, *ordered:*

1. All motions filed by any parties during the course of the hearing in this matter, which have not otherwise been disposed of, are hereby overruled.

2. That the company file tariffs which will produce additional gross revenues in an amount not to exceed $710,000, based on the volume of business in 1953, which said tariffs will become effective on one day's notice after filing and will apply to billing dates subsequent thereto.

3. This order shall become effective as of the date hereof.

Re Macon Gas Company et al.

Case No. 12,411
December 19, 1952

PETITION *of gas company for determination of original cost of its properties; original cost determination made.*

Valuation, § 67 — Original cost determination — Previous accounting.

1. A gas company improperly included in the original cost of its plant costs which had not previously been charged to plant accounts in its books and records, p. 126.

Valuation, § 122 — Original cost determination — Charges to expense — Organization.

2. Organization expenses which either have not been charged to plant or have been previously retired should not be included in an estimate of the original cost of a gas plant, p. 126.

Valuation, § 134 — Original cost determination — Salary and expenses paid by affiliate — Engineering costs.

3. The salary and expenses of an engineer which had been paid by an affiliate, charged to the latter company's operating expenses, taken as tax deductions, and never billed to a gas company, should not be included in the original cost of the latter's gas plant, p. 127.

Valuation, § 122 — Original cost determination — Charges to expense — Salary.

4. The salary and expenses of a gas company's local manager may not be included in the company's original cost determination where they were charged to operating expenses at the time they were incurred, p. 127.

APPEARANCES: James T. Blair, Jr., Attorney, for Macon Gas Company; Homer L. Thorp, Chief Accountant, and S. B. Nelson, Engineer, for the Commission.

By the COMMISSION: This cause is before the Commission on the application of Macon Gas Company, Division of Missouri, Central Natural Gas Company, filed August 15, 1952, for the determination of the original cost of its property used in rendering gas service in Macon, Missouri.

The applicant is a corporation, duly organized and existing under the laws of the state of Missouri, having been incorporated on October 7, 1937. Subsequently, on October 20, 1937, the company purchased the stock of Macon Gas and Electric Company, which was a Missouri corporation, incorporated on January 5, 1888, and was operating as a gas utility in Oc-

tober, 1937, when Macon Gas Company acquired it. The present company has rehabilitated and enlarged the service of the distribution system since the present owners acquired the stock of Macon Gas Company in August, 1944, at which time water gas was being manufactured and distributed. A new propane gas plant was constructed in 1945, and the system was converted to propane during the same year. The company has continued the propane operation since that time.

The record further shows that during the past two years there has been in progress negotiations to secure natural gas and to construct a 25-mile pipeline to furnish natural gas in Macon, Missouri. It became evident, during these negotiations, that the amount of equity capital represented in company property would have to be determined in order to place the financing for the natural gas project. The company books and records were inadequate for this purpose and it was decided, after conference with the Commission's engineering and accounting staffs, to make a study in the field to determine the original cost of its property in Macon and submit such study to the Commission for its approval.

On the completion of the original cost appraisal mentioned above, copies were filed with this Commission and the cause was heard before a Commissioner, on August 22, 1952, in the Commission's hearing room at Jefferson City, Missouri, at which time appearances were made as indicated above. The city of Macon, Missouri, through its mayor and city clerk, filed at the time of hearing a waiver of notice of hearing. There were no protestants.

At the hearing, applicant's gas engineer testified as to the method used in determining the estimated original cost as set out in applicant's Exhibit "B." Applicant's witness also testified as to the derivation of the unit cost used in estimating the original cost. The details of these unit costs are shown in applicant's Exhibit "A."

The appraisal of the property on an original cost basis is the result of a joint endeavor of the applicant and members of the Commission's engineering staff. The record shows that as the inventories of the property as shown by the various accounts were completed by the applicant's engineers they were submitted to our staff for approval. As a result of numerous inspections of the property in the field, the inventory was checked by accounts and the unit costs used in the appraisal were agreed upon by members of the applicant's and Commission's engineering staffs.

At the hearing considerable cross-examination on the items of overheads was developed and permission was granted the applicant to file Exhibit "C" at a later date. Exhibit "C" as filed on August 25, 1952, shows the overheads to be $7,797.06 on that portion of the plant constructed prior to August, 1944. Examination of the exhibit indicates that it includes both direct and general overheads. The general overheads as computed from Exhibit "A" appear to total $3,203.39. The testimony shows that all property installed prior to 1944 was installed by predecessor companies and that

prior to that date general overheads charged to the plant account totaled $2,628.34 which were charged during the year 1931. Between the years 1931 and August, 1944, both inclusive, additions to and retirements from plant were nominal and no overheads were charged or retired.

Subsequent to the year 1944, property additions were constructed by the applicant company. A witness for applicant testified, on cross-examination, that there was included in the original cost appraisal a total of $9,858.84 representing general overheads which had not been charged to the plant account of the applicant at the date of construction or at any time thereafter. Of the foregoing amount, $7,424.28 consists of an allocation of the salaries and expenses of H. J. Forward, an engineer, and another individual who was the local manager at Macon, Missouri, during the years 1945 to 1950, inclusive; $51.42 consists of payroll taxes during the years 1945 to 1947 inclusive, applicable to the above salaries; $1,583.51 consists of workmen's compensation and liability insurance during the years 1945 to 1950 inclusive; and $799.63 consists of interest during construction during the years 1945 to 1947 inclusive.

The testimony shows that salary and expenses of H. J. Forward were paid by the Western Investment Company of Omaha, Nebraska, charged to operating expenses of that company and taken as income tax deductions by that company. The testimony further shows that control of the Western Investment Company and the applicant is vested in the same stockholder or holders.

The testimony shows that the salary and expenses of the local manager were charged to operating expenses of the applicant during the years 1946 to 1950 inclusive, and that interest was charged to income with no portion thereof being charged to construction.

A witness for the applicant testified that if this Commission permitted the capitalization of the salary and expenses at this date, which had been previously charged to operating expenses of the applicant or the Western Investment Company, that the amount would be credited to surplus in the books and records of the applicant.

The testimony further shows that the item of $320.09, included in the original cost appraisal as organization expense, was at no time charged to the plant account of the applicant or its predecessors, or if so charged has been previously retired.

On cross-examination of the applicant's witness, who testified as to the company's accounting practices, it appears that the company, since December 31, 1950, has been prorating a portion of the manager's and gas engineer's salary to construction cost of plant additions and is holding in abeyance the proper accounting entry to its books of the overheads that have been added to the recorded costs of plant from August, 1944, to December 31, 1950, should the Commission approve the estimate of original cost as set out in Exhibit "B."

The estimated original cost as of December 31, 1950, is shown on page 1 of Exhibit "B" for all property to be $128,355.40. Property not used in public service as of December 31, 1950, is shown to be $545.01 which

the record shows to be the cost of franchises and consents to serve gas in other near-by communities. The total of all property by accounts as shown on page 1, Exhibit "B," is set out in the following Table No. 1:

TABLE NO. 1

No.	Account	Used in Public Service	Not Used in Public Service	All Property
301	Organization	$320.09	$.....	$320.09
302	Franchises and Consents	309.60	545.01	845.61
312	Structures & Improvements	3,734.88	.....	3,734.88
319	Petroleum Gas Equipment	19,396.46	.....	19,396.46
325	Other Production Equipment	4,032.99	.....	4,032.99
357	Land and Land Rights	57.20	.....	57.20
359	Mains	72,108.52	.....	72,108.52
361	Services	8,320.48	.....	8,320.48
362	Meters	8,349.76	.....	8,349.76
363	Consumer Meter Installations	2,262.80	.....	2,262.80
371	Structures & Improvements	845.09	.....	845.09
372	Office Furniture & Equipt.	2,034.98	.....	2,034.98
373	Transportation Equipt.	2,550.81	.....	2,550.81
375	Shop Equipment	967.78	.....	967.78
377	Tools & Work Equipment	1,700.64	.....	1,700.64
379	Miscellaneous Equipment	818.31	.....	818.31
	Total	$127,810.39	$545.01	$128,355.40

[1] After due consideration of the evidence before us in this case, the Commission is of the opinion that the applicant, in compiling the estimated original cost of its plant, has included therein costs which have not been previously charged to its plant accounts in its books and records contrary to the rules and regulations adopted by this Commission, contrary to the classification of accounts which applicant has adopted and contrary to the law.

The classification of accounts under which this applicant operates provides on page 39 thereof:

"The cost to the utility of its gas plant shall be ascertained by analysis of the utility's records. In ascertaining the cost it is not intended that any correction need be made for depreciation, depletion, or amortization applicable to operating units or systems previously acquired, whether or not such depreciation, depletion, or amortization was recorded in the books of the accounting utility. It is likewise not intended that adjustments shall be made to record in gas plant accounts amounts previously charged to operating expenses in accordance with the uniform system of accounts in effect at the time or in accordance with the discretion of management as exercised under such uniform system of accounts.

"The detailed gas plant accounts (301 to 390, inclusive), shall be stated on the basis of cost to the utility of plant constructed by it and the original cost, estimated if not known, of plant acquired as an operating unit or system . . ."

[2] As to the capitalization of over-

heads prior to the acquisition of the property by the applicant, there were records available to applicant indicating that the only general overheads capitalized totaled $2,628.34. Applicant's witness admitted this fact on cross-examination and admitted at the same time that estimated overheads had been included in the appraisal in lieu thereof. This is true relative to the $320.09 estimated organization expenses which either had not been charged to plant or had been previously retired.

[3, 4] Concerning the salary and expenses of H. J. Forward, applicant's witness readily admitted that they had been paid by Western Investment Company, charged to that company's operating expenses, taken as tax deductions, never billed to the applicant, and could not say that they would ever be billed to applicant, the principal owner of Western Investment Company was also principal owner of the Macon Gas Company, and that the amount, if allowed by this Commission, would be used to enhance the surplus of the applicant. As to the salary and expenses of applicant's local manager, the record clearly shows they were charged to its operating expenses and cannot now be reaccounted for through charges to plant. (The charges, having been made to operating expenses in conformity with established policy in effect at the time, were never considered capital investment of applicant until the institution of the present proceeding. Deliberate discretion was exercised in so charging the items, and, having done so, applicant should not now be allowed to shift its position by now charging them to plant.)

The foregoing items are summarized as follows:

Organization Expenses		$ 320.09
Overheads added on Plant prior to 1944	$3,203.39	
Less Overheads recorded prior to 1944	2,628.34	575.05
Overheads added subsequent to 1944		9,858.84
Total		$10,753.89

and should be deducted from applicant's total claimed original cost of $128,355.40 heretofore set out, thereby resulting in a total original cost of $117,602.01 as of December 31, 1950.

Township of Pequannock et al.

v.

Erie Railroad Company

Docket No. 7211
February 4, 1953

PETITION *for order requiring railroad to remove obstruction preventing use of what the railroad claims to be a private crossing at grade maintained by it solely for access to its property; complaint dismissed for want of jurisdiction.*

Crossings, § 10 — Jurisdiction of Commission — Legal questions — Private status of railroad crossing.

The Commission does not have jurisdiction to try and determine the issue of whether or not a private crossing has, through adverse user, become public.

APPEARANCES: David Young, III, for plaintiffs; Duane E. Minard, Jr., for defendant.

By the DEPARTMENT: Complainants herein seek to have the Board order the Erie Railroad Company to remove an obstruction constructed by the company preventing the use of what the company claims to have been a private crossing at grade maintained by it solely for access to its property on the easterly side of the railroad.

The complainants claim that while originally a private crossing the crossing has become public through adverse user.

The railroad company moved that the complaint be dismissed for want of jurisdiction in the Board.

The Board is of opinion that the motion is well founded, in that the Board is without jurisdiction "to try and determine the issue of alleged title," acquired through adverse user, and grant the relief sought.

The question of whether or not the private crossing has through adverse user become public can only be determined, and the relief sought granted, by a court of competent jurisdiction.

The complaint herein is therefore dismissed.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Northern States to Spend $160,000,000 in 4 Years

NORTHERN STATES POWER COMPANY will spend at least one hundred sixty million dollars in equipment expansion over the next four years, according to B. F. Braheney, president.

New construction will add 220,000 kilowatts of generating capacity to the company's present capacity of more than one million kilowatts. More than 500 miles of heavy duty transmission lines and other improvements and additions to electric, gas, telephone, and other utility facilities will be made between now and the end of 1956.

H. H. Robertson Sponsors Building Clinic

THE H. H. ROBERTSON COMPANY is again sponsoring a travelling Building Clinic, together with several divisions of the General Electric Company. Made up of technical, informative displays, photographs, and samples, the Clinic is designed to point out to architects, engineers, and builders ways to cut costs in a period of material shortages.

The Robertson participation in the Clinic includes a presentation of the various insulated and uninsulated wall and roof constructions, daylighting (sash, skylights, and Sheetlites), ventilation, and Q-Floor. The display was designed by I. W. Ferguson and built under his supervision. General Electric Company's displays feature Q-Floor wiring, wiring materials, electrical distribution equipment and controls.

Appearances for the Clinic this year will be as follows: Cleveland, Allerton Hotel, April 22nd and 23rd; St. Louis, Sheraton Hotel, May 6th and 7th; Philadelphia, Bellevue-Stratford Hotel, May 13th and 14th. The Clinic had its premiere in 1952 and was presented in Pittsburgh, Washington, D. C., New York city, Chicago, and Detroit.

$70,000,000 Expansion Set By Southern Natural Gas

SOUTHERN NATURAL GAS COMPANY will expend $70,000,000 on its construction program this year, according to the company's annual report.

Construction is presently under way on new lines authorized by the Federal Power Commission last December to connect important new gas reserves to the system. A start is being made to increase pipe line capacity to over 1,000,000 cubic feet a day to serve an additional population of more than 735,000 in and around Augusta and Savannah, Ga., Aiken, S. C., and other Southeastern communities, subject to F. P. C. final approval. Delivery capacity of the system was expended in 1952 to 710 million cubic feet daily from 627 million cubic feet.

Two Ohio Utilities Win More Power to America Awards

TWO Ohio electric utility companies are winners of the first More Power to America Award, it was announced recently at the annual convention of the commercial section of the Edison Electric Institute.

The Cleveland Electric Illuminating Company took national honors in the division which includes utilities having 250,000 meters or more, while the Dayton Power and Light Company was winner in the division having up to 250,000 meters. Each of the winners received a plaque and cash prize.

First award for national leadership in the field of industrial electrification, the More Power to America Award is offered by the General Electric Company and is presented through the Edison Electric Institute, national organization of electric utility companies. The Award is designed to increase the productivity of American industry by encouraging creative, broadscale industrial electrification activity among the nation's electric utility operating companies, and to bring recognition to the companies and individuals making the greatest advancement in this field each year.

EEI Offers New Electric Water Heater Promotion Series

A NEW series of electric water heater promotional material has been released by the Edison Electric Institute. Designed for electric utility companies, this nine-item "variety package" highlights customer benefits of electric water heating.

This group includes a twenty minute 16mm film, "How to Stay in Hot Water," describing

(*Continued on page 26*)

the electric water heater's value to the modern home; sets of kodachrome film strips and slides on the family importance of electrically heated water; a folder illustrating "8 Reasons" for installing electric water heaters; "Matchless Ways to Easy Profits" booklet surveying the heater market; and a customer booklet, "Go Electric When You Need Hot Water," showing how heaters help housewives.

Inquiries and orders should be addressed to Edison Electric Institute, 420 Lexington Avenue, New York 17, New York.

G-E Proposes Joint Survey With Electric Utilities

A NATION-WIDE SURVEY to determine the fluctuation in home electric-power consumption over a 24-hour period has been proposed by the General Electric Company, with the cost to be shared by G-E and electric utilities.

Clarence H. Linder, G-E vice president and general manager of the Major Appliance Division at Louisville, Ky., speaking at the 19th annual sales conference of the Edison Electric Institute, said such data, on a national basis, "is necessary for an effective load-planning effort" by the utilities.

"Much work has been done on an individual company basis and by some of the industry associations," he said.

"The General Electric Company, because of the importance of such a survey to the entire electrical industry, is willing to underwrite a substantial part of the total expenditure," he continued. "Indications are that the total expense will be so great and the benefits so widespread that we believe many of you in the utility industry will recognize the need and will want to join with us in underwriting the survey project."

Commonwealth Services Described

COMMONWEALTH SERVICES, INC., business and engineering consultants, has issued a booklet which tells in detail the services which this organization and its subsidiaries are prepared to render in the public utility and industrial fields. Typical problems, based on actual cases, are used to illustrate some of the ways in which their experience may be applied.

Copies of the brochure may be obtained from the company's offices at 20 Pine Street, New York 5, N. Y.

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• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction. » »

(Professional Directory Continued on Next Page)

PROFESSIONAL DIRECTORY *(continued)*

PROFESSIONAL DIRECTORY *(continued)*

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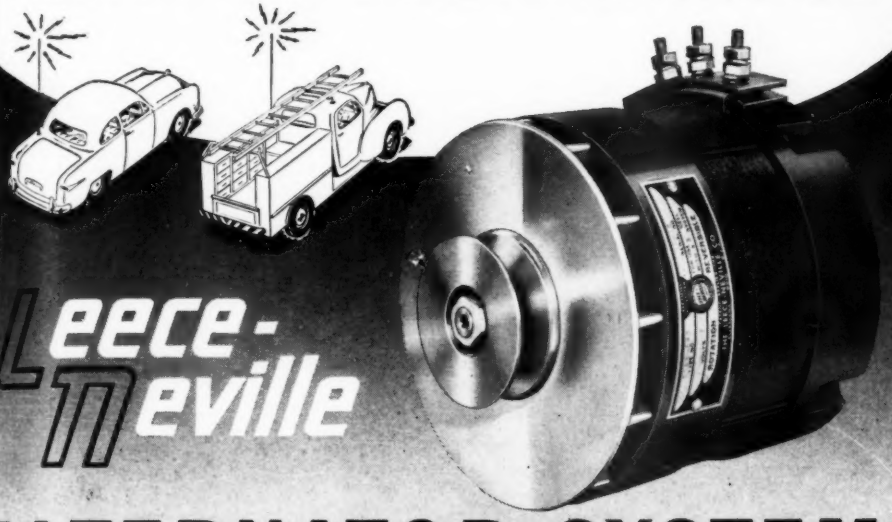

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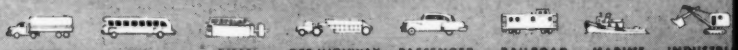

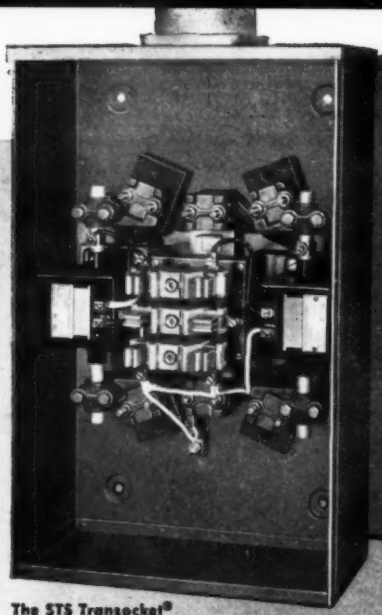

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